Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/1. CONSTITUTION AND DUTIES OF JURIES/801. Meaning of 'jury'.

# JURIES (VOLUME 61 (2010) 5TH EDITION)

## 1. CONSTITUTION AND DUTIES OF JURIES

### 801. Meaning of 'jury'.

Juries are bodies of persons convened by process of law to represent the public at a trial or inquest[1] and to discharge upon oath or affirmation[2] defined public duties. Juries must be duly empanelled and returned[3].

The law concerning juries is consolidated in the Juries Act 1974, which repealed all but a small part of previous Acts and re-enacted those parts still viable[4]. It extends to England and Wales only[5] and revolutionised jury service there[6].

1 Trial by jury is also spoken of as trial per patriam or per pais, as distinguished from trial by ordeal (long since disused), trial by battle (abolished by 59 Geo 3 c 46 (Appeal of Murder, etc) (1819) (repealed)), and trial by wager of law (abolished by the Civil Procedure Act 1833 s 13 (repealed)). As to inquests see further **CORONERS** vol 9(2) (2006 Reissue) PARA 949 et seq.

2 The word 'jury' (Latin, jurata) denotes a 'sworn body', but a juror who objects to taking the oath may make a solemn affirmation in all places and for all purposes where an oath is required by law, and such an affirmation has the same force and effect as an oath: Oaths Act 1978 s 5.

3 Bill of Rights (1688 or 1689) s 1 (amended by the Juries Act 1825 s 62; and the Statute Law Revision Act 1950). As to the empanelling of juries see PARA 816 et seq.

4 See the Juries Act 1974. The Act was based on the recommendations of the *Report of the Departmental Committee on Jury Service* (Cmnd 2627) (1965) under the chairmanship of Lord Morris of Borth-y-Gest.

The Juries Act 1974 enables the Lord Chancellor by order to make such amendments or repeals of any provisions of any local Acts as appear to him necessary or expedient in consequence of the Juries Act 1974 (see s 21(1)), and such transitional provisions as appear to him necessary or expedient (see s 21(2)). The power to make such an order is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament, and includes power to vary or revoke any order previously made in the exercise of the power: s 21(3). At the date at which this volume states the law, no such order had been made. The Lord Chancellor's functions under s 21 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

5 Juries Act 1974 s 23(4). As to the meanings of 'England' and 'Wales' see PARA 804 note 5.

6 Subject to the Juries Act 1974, all enactments and rules of law relating to trial by jury, juries and jurors continue in force and, in criminal cases, continue to apply to Crown Court proceedings: s 21(5).

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/1. CONSTITUTION AND DUTIES OF JURIES/802. Duties of juries.

### 802. Duties of juries.

The jury's duty is to return verdicts upon issues joined in courts of civil and criminal jurisdiction[1]. At an inquest the jury's duty, until a day to be appointed, is to return a verdict on matters of fact and, as from a day to be appointed, is to make a determination as to specified matters of fact[2].

1 As to the giving of verdicts see PARA 847 et seq. As to the functions of the judge and jury see also **CIVIL PROCEDURE** vol 11 (2009) PARA 795 et seq. As to the meaning of 'court' for the purposes of the Juries Act 1974 see PARA 804 note 1. As to juries in criminal courts see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1283 et seq. As to jury trial in civil cases see **CIVIL PROCEDURE** vol 12 (2009) PARA 1132.

2 At the date at which this volume states the law, no day had been appointed for the commencement of the relevant provisions of the Coroners and Justice Act 2009. As to juries at inquests see **CORONERS** vol 9(2) (2006 Reissue) PARAS 978-987.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/1. CONSTITUTION AND DUTIES OF JURIES/803. Number of a jury.

### 803. Number of a jury.

The tradition that a jury consists of 12 persons is ancient and well established[1], but is no longer always carried out in practice[2]. A county court jury must consist of eight persons[3] and a jury at an inquest must consist of not less than seven nor more than 11 persons[4]. In the High Court and the Crown Court juries may consist of any number of persons, not above 12[5], provided (in the case of the Crown Court) there are at least nine[6].

1 See 3 Bl Com (14th Edn) 379; 4 Bl Com (14th Edn) 350. The tradition became statutory before 1729: see 3 Geo 2 c 25 (Juries) (1729) s 11.

2 The Juries Act 1825 s 26, which laid down that a jury must consist of 12 men, was repealed by the Criminal Justice Act 1972 Sch 6 Pt I. The tradition of 12 jurors has also been broken in other parts of Her Majesty's dominions: see eg *Macnaghten v Paterson* [1907] AC 483 at 491, PC (Australia); *Gill v Westlake* [1910] AC 197, PC (Isle of Man).

3 County Courts Act 1984 s 67.

4 See the Coroners Act 1988 s 8(2)(a) (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 s 8(1) (not yet in force); and **CORONERS** vol 9(2) (2006 Reissue) PARA 980.

5 The presence of 13 persons improperly in the box, if not discovered until after the verdict, is a ground for a new trial: *Muirhead v Evans* (1851) 6 Exch 447 at 449 per Pollock CB.

6 See the Juries Act 1974 s 16(1); and PARA 837. As to majority verdicts see PARA 850.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/2. QUALIFICATION, EXEMPTION AND EXCUSAL OF JURORS/804. Qualification and exemption.

## 2. QUALIFICATION, EXEMPTION AND EXCUSAL OF JURORS

### 804. Qualification and exemption.

Every person is qualified to serve as a juror in the Crown Court, the High Court and county courts[1], and is liable accordingly to attend for service when summoned, if:

1 (1) he is for the time being registered as a parliamentary or local government elector[2] and is not less than 18 nor more than 70 years of age[3];
2 (2) he has been ordinarily resident[4] in the United Kingdom, the Channel Islands or the Isle of Man for any period of at least five years since attaining the age of 13[5];
3 (3) he is not a mentally disordered person[6]; and
4 (4) he is not disqualified for jury service[7].

These conditions also apply to juries at inquests[8].

A person summoned for service may be excused in certain circumstances[9] or his attendance for service may be deferred[10]. There are also provisions on disqualification[11].

1 For the purposes of the Juries Act 1974, 'court' means the Crown Court, the High Court or a county court: s 23(2). See generally **COURTS**.

2 As to registration of electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 127 et seq. See also PARA 812.

3 Juries Act 1974 s 1(1)(a) (s 1 substituted by the Criminal Justice Act 2003 Sch 33 paras 1, 2). As to the exemption of aliens from jury service see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 13.

4 As to the meaning of 'ordinarily resident' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 134; **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 58. See also **INCOME TAXATION** vol 23(2) (Reissue) PARA 1260.

5 Juries Act 1974 s 1(1)(b) (as substituted: see note 3).

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3. 'England' means, subject to any alteration of the boundaries of local government areas, the areas consisting of the counties established by the Local Government Act 1972 s 1 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 24), and Greater London and the Isles of Scilly: see the Interpretation Act 1978 Sch 1. As to local government areas in England see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 22 et seq; and as to boundary changes see **LOCAL GOVERNMENT** vol 69 (2009) PARA 56 et seq. As to Greater London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29. 'Wales' means the combined areas of the counties created by the Local Government Act 1972 s 20 (as originally enacted) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 5), but subject to any alteration made under s 73 (consequential alteration of boundary following alteration of watercourse: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 90): see the Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 Sch 2 para 9).

6 Juries Act 1974 s 1(1)(c) (as substituted: see note 3). For these purposes, 'mentally disordered person' means any person listed in Sch 1 Pt 1: s 1(2) (as so substituted). Those persons are: (1) a person who suffers or has suffered from mental disorder within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402) and on account of that condition either is resident in hospital or a similar institution or regularly attends for treatment by a medical practitioner (Juries Act 1974 Sch 1 Pt 1 para 1 (Sch 1 substituted by the Criminal Justice Act 2003 Sch 33 paras 1, 15; and the Juries Act 1974 Sch 1 Pt 1 para 1 amended by the Mental Health Act 2007 Sch 1 para 18(1), (2))); (2) a person for the time being under guardianship under the Mental Health Act 1983 s 7 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 469 et seq) or subject to a community treatment order under s 17A (see **MENTAL HEALTH**) (Juries Act 1974 Sch 1 Pt 1 para 2 (as so substituted; and amended by the Mental Health Act 2007 Sch 4 para 4)); and (3) a person who lacks capacity within the meaning of the Mental Capacity Act 2005 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641) to serve as a juror (Juries Act 1974 Sch 1 Pt 1 para 3 (Sch 1 as so substituted; and Sch 1 Pt 1 para 3 substituted by the Mental Capacity Act 2005 Sch 6 para 20)).

7 Juries Act 1974 s 1(1)(d) (as substituted: see note 3). As to persons disqualified for jury service see Sch 1 Pt 2; and PARA 805. As to the eligibility of members of the criminal justice system to serve as jurors see *R v Abdroikov, R v Green, R v Williamson* [2007] UKHL 37, [2008] 1 All ER 315, [2007] 1 Cr App Rep 280; *R v Khan* [2008] EWCA Crim 531, [2008] 3 All ER 502; *R v Yemoh* [2009] EWCA Crim 930, [2009] Crim LR 888; *R v T* [2009] EWCA Crim 1638, [2009] All ER (D) 327 (Jul).

8 See the Coroners Act 1988 s 9(1) (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 s 8(4) (not yet in force); and **CORONERS** vol 9(2) (2006 Reissue) PARA 982.

9 See PARAS 806, 808.

10 See PARA 807.

11 See PARA 805.

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## 805. Disqualified persons.

The following are disqualified from jury service:

5 (1) a person who has at any time been sentenced in the United Kingdom[1], the Channel Islands or the Isle of Man: (a) to imprisonment for life, detention for life, custody for life; (b) to detention during Her Majesty's pleasure or during the pleasure of the Secretary of State[2]; (c) to imprisonment for public protection or detention for public protection; (d) to an extended sentence under the relevant provisions of the Criminal Justice Act 2003 or the Criminal Procedure (Scotland) Act 1995[3]; or (e) to a term of imprisonment of five years or more or a term of detention of five years or more[4];

6 (2) a person who at any time in the last ten years has: (a) in the United Kingdom, the Channel Islands or the Isle of Man, served any part of a sentence of imprisonment or a sentence of detention, or had passed on him a suspended sentence of imprisonment or had made in respect of him a suspended order for detention; (b) in England and Wales[5], had made in respect of him a community order[6]; or (c) had made in respect of him any corresponding order under the law of Scotland, Northern Ireland, the Isle of Man or any of the Channel Islands or a service community order or overseas community order under the Armed Forces Act 2006[7];

7 (3) a person who is on bail in criminal proceedings[8].

1 A sentence passed anywhere in respect of a service offence within the meaning of the Armed Forces Act 2006 (see **ARMED FORCES**) is to be treated as having been passed in the United Kingdom: Juries Act 1974 Sch 1 Pt 2 para 8(a) (Sch 1 substituted by the Criminal Justice Act 2003 Sch 33 paras 1, 15; and the Juries Act 1974 Sch 1 Pt 2 para 8(a) amended by the Armed Forces Act 2006 Sch 16 para 62(b)). As to the meaning of 'United Kingdom' see PARA 804 note 5. The reference to a service offence includes an SDA offence: Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059, Sch 1 para 13. 'SDA offence' means: (1) any offence under the Army Act 1955 Pt 2 (ss 24-143) or the Air Force Act 1955 Pt 2 (ss 24-143); (2) any offence under the Naval Discipline Act 1957 Pt 1 (ss 1-43B) or s 47K; (3) an offence under the Army Act 1955 Sch 5A para 4(6) or s 18 or s 20 or the Air Force Act 1955 Sch 5A para 4(6) or the Naval Discipline Act 1957 Sch 4A or any of the Reserve Forces Act 1996 ss 95-97 committed before commencement; (4) an offence under the Reserve Forces Act 1996 Sch 1 para 5(1) committed before commencement by a person who: (a) after committing the offence and before commencement became a member of a reserve force and remained such a member until commencement, or immediately before commencement was subject to military law, air force law or the Naval Discipline Act 1957; or (b) after commencement becomes a member of the reserve forces: Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059, art 2(4), (5). A person is sentenced to a term of detention if, but only if:

1 (i) a court passes on him, or makes in respect of him on conviction, any sentence or order which requires him to be detained in custody for any period; and

2 (ii) the sentence or order is available only in respect of offenders below a certain age,

and any reference to serving a sentence of detention is to be construed accordingly: Juries Act 1974 Sch 1 Pt 2 para 8(b) (Sch 1 as so substituted).

2 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is generally capable of performing the functions of all or any of them: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

3 Ie an extended sentence under the Criminal Justice Act 2003 s 227 (extended sentence for certain violent or sexual offences where the offender is aged 18 years or over) or s 228 (extended sentence for certain violent or sexual offences where the offender is under 18): see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 75.

4 Juries Act 1974 Sch 1 Pt 2 para 6 (as substituted: see note 1).

5 As to the meanings of 'England' and 'Wales' see PARA 804 note 5.

6 Ie a community order under the Criminal Justice Act 2003 s 177, or any of the following orders (which are no longer available): a community rehabilitation order, a community punishment order, a community punishment and rehabilitation order, a drug treatment and testing order or a drug abstinence order. As to community orders see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 163, 168 et seq.

7 Juries Act 1974 Sch 1 Pt 2 para 7 (as substituted: see note 1). As to service community orders and overseas community orders see **ARMED FORCES**.

8 Juries Act 1974 Sch 1 Pt 2 para 5 (as substituted: see note 1). As to the meaning of 'bail in criminal proceedings' see the Bail Act 1976 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1166.

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## 806. Discretion to excuse persons from jury service.

If a person summoned under the Juries Act 1974[1] shows to the satisfaction of the appropriate officer[2] that there is good reason why he should be excused from attending in pursuance of the summons, the officer may[3] excuse him from so attending[4]. Without prejudice to this[5], the appropriate officer must in certain circumstances excuse a full-time serving member of the armed forces[6]. If the appropriate officer refuses[7], there is a right of appeal to the court[8], or one of the courts, to which the person is summoned[9]. Any court before which a person is summoned to attend under the Juries Act 1974 may excuse him[10].

Where it appears to the appropriate officer that on account of insufficient understanding of English there is doubt as to the capacity of a person attending in pursuance of a summons for jury service to act effectively as a juror, the person may be brought before the judge, who must determine whether or not he should act as a juror and, if not, must discharge the summons[11].

Where it appears to the appropriate officer that on account of physical disability there is doubt as to the capacity of a person attending in pursuance of a summons to act effectively as a juror, the person may be brought before the judge[12]. The judge must determine whether or not the person should act as a juror, but he must affirm the summons unless he is of the opinion that the person will not, on account of his disability, be capable of acting effectively as a juror, in which case he must discharge the summons[13].

If a person summoned for jury service shows to the satisfaction of the appropriate officer or the court, or any of the courts, to which he is summoned:

8 (1) that he has served, or attended to serve, on a jury[14] within two years ending with the service of the summons on him[15]; or

9 (2) that the Crown Court or any other court has excused him from service for a period which has not terminated[16],

the officer or court must excuse him from attending, or further attending, in pursuance of the summons[17].

Similar provisions apply to service on a jury at an inquest[18].

1 Ie under the Juries Act 1974 s 2 (see PARA 813) or s 6 (see PARA 817).

2 'Appropriate officer' means such officer as may be designated for the purpose in question in accordance with arrangements made by the Lord Chancellor: Juries Act 1974 s 23(2). The Lord Chancellor's function under s 23(2) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

3 Ie subject to the Juries Act 1974 s 9A(1A): see PARA 808.

4 Juries Act 1974 s 9(2) (amended by the Criminal Justice Act 2003 Sch 33 paras 1, 4, Sch 37 Pt 10). Those employed by prosecuting authorities become another category of persons who, as a result of their occupation, qualify for excusal: *R v Abdroikov, R v Green, R v Williamson* [2007] UKHL 37, [2008] 1 All ER 315, [2007] 1 Cr App Rep 280. As to excusal from a particular case, rather than jury service generally, see PARA 824. See also note 16.

5 Ie without prejudice to the Juries Act 1974 s 9(2) (see the text and notes 1-4).

6 See the Juries Act 1974 s 9(2A) (added by the Criminal Justice Act 2003 Sch 33 paras 1-5); and PARA 808.

7 Ie under the Juries Act 1974 s 9(2) or s 9(2A) (see the text and notes 1-6).

8 As to the meaning of 'court' see PARA 804 note 1.

9 See the Juries Act 1974 s 9(3) (amended by the Courts Act 2003 Sch 8 para 172(a), Sch 33 paras 1, 6); and PARA 810.

10 Juries Act 1974 s 9(4). As to excusal by the court see also note 16. As to the deferral of jury service see s 9A; and PARA 807.

11 Juries Act 1974 s 10 (amended by the Criminal Justice and Public Order Act 1994 Sch 11).

12 Juries Act 1974 s 9B(1) (s 9B added by the Criminal Justice and Public Order Act 1994 s 41). For these purposes, 'judge' means any judge of the High Court, or any circuit judge or recorder: Juries Act 1974 s 9B(3) (as so added). As from a day to be appointed, s 9B(3) is substituted so as to define 'judge' for the purposes of s 9B and s 10 as a judge of the High Court, a circuit judge, a District Judge (Magistrates' Courts), or a recorder: s 9B(3) (as so added; and prospectively substituted by the Courts Act 2003 Sch 4 para 3). At the date at which this volume states the law, no such day had been appointed.

13 Juries Act 1974 s 9B(2) (as added: see note 12). See *Re Osman* [1995] 1 WLR 1327, [1996] 1 Cr App Rep 126 (profoundly deaf juror discharged).

14 'Served on a jury' means service on a jury in any court, including any court abolished by the Courts Act 1971 but excluding a coroner's court: Juries Act 1974 s 8(5).

15 Juries Act 1974 s 8(1)(a), (2). The period of two years may be extended by the Lord Chancellor by order made by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament; and the order may be varied or revoked by subsequent order: s 8(2). At the date at which this volume states the law, no such order had been made.

16 Juries Act 1974 s 8(1)(b). It is a practice among judges to direct that jurors who have served before them in cases which have occupied an exceptional length of time are excused from further service for a stated period, and even for life (eg exemptions for life were granted by Bigham J in *Tootal, Broadhurst, Lee & Co v London and Lancashire Fire Insurance Co* (1908) Times, 21 May, PC; and by Devlin J in *R v Adams* (1957) Times, 10 April), and to order certificates of exemption to be delivered to them by the officer of the court. In *R v Jameson* (1896) 12 TLR 551 at 580, Lord Russell of Killowen CJ considered that he had the power to do this, but

he referred to no authority and rather assumed that there was precedent. The practice is said to have grown up since the Tichborne trials of 1871-1874.

17 Juries Act 1974 s 8(1).

18 See the Coroners Rules 1984, SI 1984/552, rr 49, 51, 52; and **CORONERS** vol 9(2) (2006 Reissue) PARAS 983-985. There is, however, no equivalent provision concerning the right to appeal against a refusal to excuse from jury service.

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## 807. Deferral of jury service.

If a person summoned under the Juries Act 1974[1] shows to the satisfaction of the appropriate officer[2] that there is good reason why his attendance in pursuance of the summons should be deferred, the officer may[3] defer his attendance[4]. If the officer refuses, there is a right of appeal to the court[5], or one of the courts, to which the person is summoned[6]. Any court before which a person is summoned may defer his attendance[7].

The attendance of a person in pursuance of a summons must not, however, be deferred by the appropriate officer under the above statutory power[8] where a deferral of such attendance has previously been made or refused[9] or where the special provisions made with regard to full-time serving members of Her Majesty's naval, military or air forces[10] apply[11].

1 Ie under the Juries Act 1974 s 2 (see PARA 813) or s 6 (see PARA 817).

2 As to the meaning of 'appropriate officer' see PARA 806 note 2.

3 Ie subject to the Juries Act 1974 s 9A(2) (see the text and notes 8-11).

4 Juries Act 1974 s 9A(1) (s 9A added by the Criminal Justice Act 1988 s 120; and the Juries Act 1974 s 9A(1) amended by the Criminal Justice Act 2003 Sch 33 paras 1, 7).

5 As to the meaning of 'court' see PARA 804 note 1.

6 See the Juries Act 1974 s 9A(3) (as added: see note 4); CrimPR 39.2; and PARA 810.

7 Juries Act 1974 s 9A(4) (as added: see note 4). See also *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.42.1, CA; *Amendment to the Consolidated Criminal Practice Direction (Jury service)* [2005] 3 All ER 89, sub nom *Practice Direction (Crown Court: Jury Service)* [2005] 1 WLR 1361, CA.

8 Ie under the Juries Act 1974 s 9A(1) (see the text and notes 1-4) or under s 9A(1A) (deferral of attendance of full-time serving member of armed forces: see PARA 808).

9 Ie under the Juries Act 1974 s 9A(1) (see the text and notes 1-4).

10 See the Juries Act 1974 s 9A(1A), (2A), (2B); and PARA 808.

11 Juries Act 1974 s 9A(2), (2A) (s 9A as added (see note 4); s 9A(2) substituted by the Criminal Justice Act 2003 Sch 33 paras 1, 9; and the Juries Act 1974 s 9A(2A) added by the Criminal Justice Act 2003 Sch 33 paras 1, 10). See also PARA 808.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/2. QUALIFICATION, EXEMPTION AND EXCUSAL OF JURORS/808. Special provisions for excusal and deferment for full-time serving members of the armed forces.

**808. Special provisions for excusal and deferment for full-time serving members of the armed forces.**

Without prejudice to the general discretionary power of excusal[1], the appropriate officer[2] must excuse a full-time serving member of Her Majesty's naval, military or air forces from attending in pursuance of a summons for jury service if:

10 (1) that member's commanding officer certifies to the appropriate officer that it would be prejudicial to the efficiency of the service if that member were to be required to be absent from duty[3]; and

11 (2) either: (a) a deferral of his attendance has previously been made or refused under the general discretionary power to defer attendance[4], or made under the provisions described below[5]; or (b) the commanding officer additionally certifies that the position described in head (1) above is likely to remain so for the specified period[6].

If the appropriate officer fails to excuse the member as so required, there is a right of appeal to the court[7], or one of the courts, to which the person is summoned[8].

Without prejudice to the general discretionary power to defer attendance[9], the appropriate officer must:

12 (i) defer[10] the attendance of a full-time serving member of Her Majesty's naval, military or air forces in pursuance of a summons if that member's commanding officer certifies to the appropriate officer that it would be prejudicial to the efficiency of the service if that member were to be required to be absent from duty[11]; and

13 (ii) for this purpose vary the dates upon which that member is summoned to attend and the summons is to have effect accordingly[12].

If the appropriate officer fails to defer the member's attendance as so required, there is a right of appeal to the court, or one of the courts, to which the person is summoned[13].

1 Ie without prejudice to the Juries Act 1974 s 9(2) (see PARA 806).

2 As to the meaning of 'appropriate officer' see PARA 806 note 2.

3 Juries Act 1974 s 9(2A)(a) (s 9(2A), (2B) added by the Criminal Justice Act 2003 Sch 33 paras 1, 5).

4 Ie under the Juries Act 1974 s 9A(1) (see PARA 807).

5 Ie under the Juries Act 1974 s 9A(1A) (see the text and notes 9-12).

6 Juries Act 1974 s 9(2A)(b) (as added: see note 3); and see s 9A(2A), (2B) (s 9A added by the Criminal Justice Act 1988 s 120; and the Juries Act 1974 s 9A(2A), (2B) added by the Criminal Justice Act 2003 Sch 33 paras 1, 10). The Juries Act 1974 s 9(2A) does not affect the application of s 9(2) (see PARA 806) to a full-time serving member of Her Majesty's naval, military or air forces in a case where he is not entitled to be excused under s 9(2A): s 9(2B) (as added: see note 3).

The period referred to in the text is any period specified for these purposes in guidance issued by the Lord Chancellor under s 9AA (see PARA 809). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

7 As to the meaning of 'court' see PARA 804 note 1.

8 See the Juries Act 1974 s 9(3); and PARA 810.

9 Ie without prejudice to the Juries Act 1974 s 9A(1) (see PARA 807).

10 The obligation to defer under the Juries Act 1974 s 9A(1A) is displaced if s 9A(2A) or (2B) (see head (2) in the text) applies: s 9A(2) (s 9A as added (see note 6); and s 9A(2) substituted by the Criminal Justice Act 2003 Sch 33 paras 1, 9).

11 Juries Act 1974 s 9A(1A)(a), (1B) (s 9A as added (see note 6); and s 9A(1A)-(1C) added by the Criminal Justice Act 2003 Sch 33 paras 1, 8).

12 Juries Act 1974 s 9A(1A)(b) (as added: see notes 6, 11). Nothing in s 9A(1A), (1B) affects the application of s 9A(1) (see PARA 807) to a full-time serving member of Her Majesty's naval, military or air forces in a case where s 9A(1B) does not apply: s 9A(1C) (as so added).

13 See the Juries Act 1974 s 9A(3); and PARA 810.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/2. QUALIFICATION, EXEMPTION AND EXCUSAL OF JURORS/809. Requirement to issue guidance relating to excusal and deferment.

## 809. Requirement to issue guidance relating to excusal and deferment.

The Lord Chancellor[1], after consulting the Lord Chief Justice[2], must issue guidance as to the manner in which the functions of the appropriate officer[3] under the statutory provisions relating to excusal and deferment of jury service[4] are to be exercised[5].

The Lord Chancellor must lay the guidance, and any revised guidance, so issued before each House of Parliament[6] and must arrange for the guidance, or revised guidance, to be published in a manner which he considers appropriate[7].

1 As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

2 The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) to exercise his functions under the Juries Act 1974 s 9AA: s 9AA(3) (s 9AA added by the Criminal Justice Act 2003 Sch 33 paras 1, 12; and the Juries Act 1974 s 9AA(3) added by the Constitutional Reform Act 2005 Sch 4 paras 77, 79(1), (3)).

3 As to the meaning of 'appropriate officer' see PARA 806 note 2.

4 Ie under the Juries Act 1974 ss 9, 9A: see PARAS 806-808.

5 Juries Act 1974 s 9AA(1) (as added (see note 2); and amended by the Constitutional Reform Act 2005 Sch 4 paras 77, 79(1), (2)). See *Guidance for summoning officers when considering deferral and excusal applications* issued by Her Majesty's Courts Service (June, 2009).

6 Juries Act 1974 s 9AA(2)(a) (as added: see note 2).

7 Juries Act 1974 s 9AA(2)(b) (as added: see note 2).

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/2. QUALIFICATION, EXEMPTION AND EXCUSAL OF JURORS/810. Appeals against refusal to excuse jury service or to defer attendance.

## 810. Appeals against refusal to excuse jury service or to defer attendance.

A person summoned for jury service[1] may appeal[2] against any refusal of the appropriate officer[3] to excuse him or to defer his attendance[4]. The appeal must be heard by the Crown Court[5]

unless: (1) the appellant is summoned before the High Court in Greater London, in which case the appeal must be heard by a judge of the High Court; or (2) the appellant is summoned before the High Court outside Greater London or before a county court and the appeal has not been decided by the Crown Court before the day on which the appellant is required to attend, in which case it must be heard by the court before which he is summoned to attend[6]. The appeal must be commenced by written notice to the appropriate officer of the Crown Court or of the High Court in Greater London, as the case may be, specifying the matters upon which the appellant relies as providing good reason why he should be excused from attendance in pursuance of the summons or why his attendance should be deferred[7]; and the appeal may not be dismissed unless the appellant has been given an opportunity to make representations[8]. If the appeal is decided in the appellant's absence the appropriate officer must notify him of the decision without delay[9].

There is no right to legal representation on such an appeal; however, the judge has discretion to allow representation[10].

1 Ie under the Juries Act 1974 s 2 (see PARA 813) or s 6 (see PARA 817): see s 9(2) (amended by the Criminal Justice Act 2003 Sch 33 paras 1, 4, Sch 37 Pt 10); and the Juries Act 1974 s 9A(1) (s 9A added by the Criminal Justice Act 1988 s 120; and the Juries Act 1974 s 9A(1) amended by the Criminal Justice Act 2003 Sch 33 paras 1, 7).

2 Juries Act 1974 s 9(3) (amended by the Criminal Justice Act 2003 Sch 33 paras 1, 6); Juries Act 1974 s 9A(3) (as added (see note 1); and amended by the Criminal Justice Act 2003 Sch 33 paras 1, 11); CrimPR 39.1.

3 As to the meaning of 'appropriate officer' see PARA 806 note 2.

4 As to excusal see the Juries Act 1974 s 9(2), (2A); and PARA 806. As to deferral see s 9A(1), (1A); and PARA 807.

5 Crim PR 39.2(2). The appeal may be heard in chambers by a single judge: see Crim PR 16.11(2)(c).

6 Crim PR 39.2(3).

7 Crim PR 39.2(4).

8 Crim PR 39.2(5).

9 Crim PR 39.2(6).

10 *R v Crown Court at Guildford, ex p Siderfin* [1990] 2 QB 683, [1989] 3 All ER 7, DC. Where a conscientious objection to jury service forms the basis of the appeal, the discretion to allow representation should be exercised carefully and sympathetically: *R v Crown Court at Guildford, ex p Siderfin*.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/2. QUALIFICATION, EXEMPTION AND EXCUSAL OF JURORS/811. Offences.

## 811. Offences.

It is an offence: (1) for a person summoned for jury service[1] to make, or cause or permit to be made on his behalf, any false representation[2] to the appropriate officer[3] with the intention of evading service[4]; (2) for a person to make, or cause to be made, on behalf of another person who has been so summoned any false representation to that officer with the intention of enabling the other person to evade service[5]; (3) when any question is put by that officer to establish qualification[6], for a person to refuse without reasonable cause to answer, or to give an answer knowing it to be false in a material particular[7], or recklessly[8] to give an answer which is false in a material particular[9]; or (4) for a person to serve on a jury knowing that he is disqualified[10]. These offences are punishable on summary conviction[11].

Similar provisions apply to service as a juror at an inquest[12].

1 Ie under the Juries Act 1974 s 2 (see PARA 813) or s 6 (see PARA 817).

2 A statement, although literally true, may be false by reason of what it omits: see *R v Lord Kylsant* [1932] 1 KB 442, CCA; *R v Bishirgian* [1936] 1 All ER 586, CCA.

3 As to the meaning of 'appropriate officer' see PARA 806 note 2.

4 Juries Act 1974 s 20(5)(a).

5 Juries Act 1974 s 20(5)(b).

6 Ie in pursuance of the Juries Act 1974 s 2(5) (see PARA 813).

7 A particular may be material on the mere ground that it renders more credible something else: *R v Tyson* (1867) LR 1 CCR 107.

8 As to the meaning of 'recklessly' see in particular *R v G* [2003] UKHL 50, [2004] 1 AC 1034, [2003] 4 All ER 765 (meaning of recklessness in the criminal law). See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 11; **MISREPRESENTATION AND FRAUD**.

9 Juries Act 1974 s 20(5)(c).

10 Juries Act 1974 s 20(5)(d) (substituted by the Criminal Justice Act 2003 Sch 33 paras 1, 14). As to disqualification see PARA 805.

11 The maximum penalty for serving on a jury where disqualified is a fine of not more than level 5 on the standard scale and, in respect of any other offence mentioned in the text, a fine of not more than level 3 on the standard scale: Juries Act 1974 s 20(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

12 See the Coroners Act 1988 s 9(5), (6) (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 Sch 6 Pt 1 (not yet in force); and **CORONERS** vol 9(2) (2006 Reissue) PARA 982.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/3. SUMMONING OF JURORS/812. Selection based on electoral register.

# 3. SUMMONING OF JURORS

## 812. Selection based on electoral register.

As soon as practicable after the publication of any register of electors[1], the electoral registration officer for the area[2] must deliver to such officer as the Lord Chancellor[3] may designate such number of copies of the register as the designated officer may require for the purpose of summoning jurors[4], and on each copy there must be indicated those persons on the register whom the registration officer has ascertained to be, or to have been on a date indicated on the copy, less than 18 or more than 70 years of age[5].

1 This does not include a ward list within the meaning of the City of London (Various Powers) Act 1957 s 4(1) (see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 41): Juries Act 1974 s 3(2). As to the register of electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 160 et seq.

2 Ie under the Representation of the People Act 1983 (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 154).

3 The Lord Chancellor's function under the Juries Act 1974 s 3(1) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

4 As to the summoning of jurors see PARA 813. The designated officer will often be the same as the appropriate officer (see PARA 806 note 2).

5 Juries Act 1974 s 3(1) (amended by the Criminal Justice Act 1988 Sch 15 para 44; and the Representation of the People Act 1983 Sch 8 para 17). See also PARA 804 head (1). If a register to be delivered under the Juries Act 1974 s 3(1) includes any anonymous entries (within the meaning of the Representation of the People Act 1983: see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 154) the registration officer must, at the same time as he delivers the register, also deliver to the designated officer any record prepared in pursuance of provision made as mentioned in Sch 2 para 8A (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 127) which relates to such anonymous entries: Juries Act 1974 s 3(1A) (added by the Electoral Administration Act 2006 Sch 1 para 1).

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/3. SUMMONING OF JURORS/813. Summoning procedure.

## 813. Summoning procedure.

The Lord Chancellor[1] is responsible for the summoning of jurors to attend for service in the Crown Court, the High Court and county courts[2] and for determining the occasions on which they are to attend when so summoned, and the number to be summoned[3].

Jurors must be summoned by written notice sent by post or delivered by hand[4], accompanied by a notice informing the potential juror of the effect of the statutory provisions[5] relating to qualification for jury service and related matters[6]. When a person is summoned[7] the appropriate officer may at any time put or cause to be put to him such questions as the officer thinks fit in order to establish whether or not the person is qualified for jury service[8].

A certificate signed by the appropriate officer and stating that a written summons, properly addressed and pre-paid, was posted by him is admissible as evidence in any proceedings, without proof of his signature or official character[9].

Records of persons summoned and included in panels[10] must be kept as directed by the Lord Chancellor, who may allow inspection of the records by the public in such circumstances and under such conditions as he may prescribe[11]. A person duly attending in compliance with a summons is entitled to a certificate recording that he has so attended[12].

1 The Lord Chancellor generally acts for these purposes through officers of the court, but also has power to contract out certain functions. The Lord Chancellor may authorise another person, or that person's employees, to perform the Lord Chancellor's functions under the Juries Act 1974 s 2, in so far as they involve the production and posting of jury summonses: see the Contracting Out (Jury Summoning Functions) Order 1999, SI 1999/2128. The Lord Chancellor's functions under the Juries Act 1974 s 2 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. The discretion to summon jurors currently rests with the Jury Central Summoning Bureau. As to the power of the High Court, the Crown Court or a county court to summon jurors in exceptional circumstances see PARA 817.

2 As to the summoning of jurors for service on a jury at an inquest see the Coroners Act 1988 s 8 (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 s 8 (not yet in force); the Coroners Rules 1984, SI 1984/552, rr 44-46; and **CORONERS** vol 9(2) (2006 Reissue) PARA 980.

3 Juries Act 1974 s 2(1). In making arrangements to discharge this duty, the Lord Chancellor must have regard to the convenience of the persons summoned and their respective places of residence, and in particular to the desirability of selecting jurors within reasonable daily travelling distance of the place where they are to attend: s 2(2). Subject to this provision, there is no restriction on the places in England and Wales at which a

person may be required to attend or serve on a jury: s 2(3). See further PARA 817. As to the meanings of 'England' and 'Wales' see PARA 804 note 5.

4 Juries Act 1974 s 2(4). For the purposes of the Interpretation Act 1978 s 7 (presumption as to receipt of letter properly addressed and sent by post: see **STATUTES** vol 44(1) (Reissue) PARA 1388), the notice is regarded as properly addressed if the address is that shown in the electoral register; and a notice so addressed, and delivered by hand to that address, is deemed to have been delivered personally to the person to whom it is addressed unless the contrary is proved: Juries Act 1974 s 2(4) (amended by virtue of the Interpretation Act 1978 s 17(2)(a)). See further **CIVIL PROCEDURE** vol 11 (2009) PARA 946. As to the offence of failing to attend in compliance with a summons see PARA 818.

5 The relevant statutory provisions are the Juries Act 1974 s 1 (see PARA 804), s 10 (see PARA 806) and s 20(5) (see PARA 811): see s 2(5)(a) (amended by the Criminal Justice Act 2003 Sch 37 Pt 10).

6 Juries Act 1974 s 2(5)(a) (as amended: see note 5). The potential juror must be informed that he may make representations to the appropriate officer (see PARA 806 note 2) with a view to obtaining the withdrawal of the summons, if for any reason he is not qualified for jury service, or wishes or is entitled to be excused: s 2(5)(b). Excusal from jury service must be ordered under s 8 (on grounds relating to previous jury service: see PARA 806) or s 9 (obligatory excusal of service personnel: see PARA 808), and may be ordered under s 9 (discretionary excusal: see PARA 806). In specified circumstances deferral of jury service for service personnel is obligatory under s 9A (see PARA 808), and a juror may be able to obtain a discretionary deferral of jury service under s 9A (see PARA 807) or a discharge of the summons under s 9B (disabled persons: see PARA 806) or s 10 (doubt as to capacity to act effectively as juror: see PARA 806).

7 Ie a summons under the Juries Act 1974 s 2(4) (see the text and note 4) or s 6 (see PARA 817).

8 Juries Act 1974 s 2(5) (amended by the Administration of Justice Act 1982 s 61).

9 Juries Act 1974 s 2(6). The Lord Chancellor may authorise another person, or that person's employees, to sign certificates of posting: see the Contracting Out (Jury Summoning Functions) Order 1999, SI 1999/2128.

10 As to panels see PARA 816.

11 Juries Act 1974 s 8(3).

12 Juries Act 1974 s 8(4). Similar provisions apply to service on a jury at an inquest: see the Coroners Rules 1984, SI 1984/552, r 50; and **CORONERS** vol 9(2) (2006 Reissue) PARA 986.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/3. SUMMONING OF JURORS/814. Withdrawal or alteration of summonses.

## 814. Withdrawal or alteration of summonses.

If it appears to the appropriate officer[1], at any time before the day on which any person summoned for jury service[2] is first to attend, that his attendance is unnecessary or can be dispensed with on any particular day or days, the officer may withdraw or alter the summons by notice served in the same way as a notice of summons[3].

1 As to the meaning of 'appropriate officer' see PARA 806 note 2.

2 Ie under the Juries Act 1974 s 2 (see PARA 813).

3 Juries Act 1974 s 4. As to service see PARA 813 text and note 4. Similar provisions apply to service on a jury at an inquest: see the Coroners Rules 1984, SI 1984/552, r 47; and **CORONERS** vol 9(2) (2006 Reissue) PARA 980.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/3. SUMMONING OF JURORS/815. Attendance and service.

## 815. Attendance and service.

A person summoned for jury service[1] must attend for so many days as may be directed by the summons or by the appropriate officer[2], and is liable to serve on any jury in the Crown Court, the High Court or any county court at the place to which he is summoned, or in the vicinity[3].

1 Ie under the Juries Act 1974 s 2 (see PARA 813) or s 6 (see PARA 817).

2 As to the meaning of 'appropriate officer' see PARA 806 note 2.

3 Juries Act 1974 s 7. This is expressed to be subject to the provisions of the Juries Act 1974. As to the offence of failure to attend in compliance with a summons see PARA 818.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/3. SUMMONING OF JURORS/816. Panels.

## 816. Panels.

The arrangements to be made by the Lord Chancellor[1] include the preparation of lists (known as 'panels') of persons summoned as jurors[2]. The information to be included in panels, the court[3] sittings for which they are prepared, their division into parts or sets[4], their enlargement or amendment and all other matters relating to the contents and form of the panels are to be such as the Lord Chancellor may from time to time direct[5].

A party to proceedings in which jurors are or may be called on to try an issue, and any person acting on his behalf, is entitled to reasonable facilities for inspecting the panel from which the jurors are or will be drawn[6]. If it thinks fit, the court may also at any time afford to any person facilities for inspecting the panel[7].

1 Ie under the Juries Act 1974. As to the Lord Chancellor's duties under the Juries Act 1974 see s 2(1)-(2); and PARA 813. The Lord Chancellor's function under s 5(1) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

2 Juries Act 1974 s 5(1). As to summoning see s 2 (see PARA 813) and s 6 (see PARA 817).

A trial judge has no power to interfere with the composition of a jury panel in order to secure a jury of a particular ethnic origin or from a particular section of the community: *R v Ford* [1989] QB 868, [1989] 3 All ER 445, CA. Nor has the judge power to order a jury to be summoned from outside the normal catchment area: *R v Tarrant* [1998] Crim LR 342, CA. In *R v Smith (Lance Percival)* [2003] EWCA Crim 283, [2003] 1 WLR 2229, it was held that the random process of jury selection under the Juries Act 1974 was not incompatible with the defendant's right to a fair hearing by an independent and impartial court under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134 et seq). Contrast *Rojas v Berllaque (A-G for Gibraltar Intervening)* [2003] UKPC 76, [2004] 1 WLR 201 (where an all-male jury compiled in accordance with a Gibraltar ordinance, under which service was compulsory for males and voluntary for females, was held not to satisfy the constitutional requirement of a fair trial by an independent and impartial court because it was discriminatory between males and females). The Convention is commonly referred to as the European Convention on Human Rights and is enshrined in the Human Rights Act 1998 Sch 1: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq.

3 As to the meaning of 'court' see PARA 804 note 1.

4 Ie whether according to the day of first attendance or otherwise.

5 Juries Act 1974 s 5(1). The Lord Chancellor must consult the Lord Chief Justice before giving any such direction: s 5(5) (s 5(5), (6) added by the Constitutional Reform Act 2005 Sch 4 paras 77, 78). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4): see

**CONSTITUTIONAL LAW AND HUMAN RIGHTS**) to exercise his functions under the Juries Act 1974 s 5: s 5(6) (as so added). At the outset of the trial the judge should warn the members of the jury: (1) that they must try the case on the evidence that they hear in court and on nothing else; (2) that they must not discuss the case with others outside court, such as members of their family; and (3) that they should not conduct their own private research, eg using the internet: *R v Marshall* [2007] EWCA Crim 35, [2007] All ER (D) 76 (Jan).

6 Juries Act 1974 s 5(2). The right is not exercisable after the close of the trial by jury or after the time when it is no longer possible for there to be a trial by jury: s 5(3).

7 Juries Act 1974 s 5(4).

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## 817. Summoning in exceptional circumstances.

If it appears to the court[1] that a jury to try an issue before it will be, or probably will be, incomplete[2], the court may, if it thinks fit, require any persons who are in, or in the vicinity of, the court to be summoned without written notice[3] for jury service up to the number needed[4] to make up a full jury[5]. Their names must be added to the panel and the court must proceed as if they had been included in the panel in the first instance[6].

1 As to the meaning of 'court' see PARA 804 note 1.

2 At common law it was not permissible to constitute a jury entirely of 'talesmen' (as jurors summoned under the procedure described in this paragraph were known) in the absence of jurors duly empanelled (*R v Solomon* [1958] 1 QB 203, [1957] 3 All ER 497, CCA). The word 'incomplete' in the Juries Act 1974 s 6(1) suggests that a jury containing 'talesman' must include at least one juror who has been summoned in the usual way.

3 As to the need for notice generally see PARA 813 text and note 4.

4 Ie after allowing for any who may not be qualified under the Juries Act 1974 s 1 (see PARA 804), and for excusals (see PARAS 806, 808) and challenges (see PARA 825 et seq).

5 Juries Act 1974 s 6(1) (amended by the Criminal Justice Act 1988 Sch 15 para 45). As to the number of persons required for a jury see PARA 803. This procedure may be exercised before or after balloting has begun: see the Juries Act 1974 s 11(2); and PARA 823. Similar provisions apply to service on a jury at an inquest: see the Coroners Rules 1984, SI 1984/552, r 48; and **CORONERS** vol 9(2) (2006 Reissue) PARA 981.

6 Juries Act 1974 s 6(2).

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/3. SUMMONING OF JURORS/818. Non-attendance by juror.

## 818. Non-attendance by juror.

A person who:

14 (1) is duly summoned for jury service[1] and fails to attend on any day on which he is required to attend by the summons or by the appropriate officer[2] in compliance with the summons[3]; or

15 (2) after attending in pursuance of a summons, is not available when called on to serve as a juror, or is unfit for service by reason of drink or drugs[4],

is liable to a fine[5]. Such an offence is punishable either on summary conviction or as if it were criminal contempt of court committed in the face of the court[6].

A person is not liable to be punished for such an offence if he shows some reasonable cause for his failure to comply with the summons or for not being available when called on to serve[7].

1 Ie under the Juries Act 1974 s 2 (see PARA 813) or s 6 (see PARA 817).

2 As to the meaning of 'appropriate officer' see PARA 806 note 2.

3 Juries Act 1974 s 20(1)(a). This does not apply to a person summoned, otherwise than under s 6 (see PARA 817), unless the summons was duly served on him on a date not later than 14 days before the date fixed by the summons for his first attendance: s 20(3).

4 Juries Act 1974 s 20(1)(b).

5 Juries Act 1974 s 20(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a fine must not exceed level 3 on the standard scale: Juries Act 1974 s 20(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. These provisions have effect subject to the provisions of the Juries Act 1974 as to the withdrawal or alteration of a summons (see PARA 814) and as to the granting of any excusal (see PARAS 806, 808) or deferral (see PARA 807): s 20(4) (amended by the Criminal Justice Act 1988 Sch 15 para 46). As to offences in connection with failure to attend to serve on a jury at an inquest see the Coroners Act 1988 s 10 (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 Sch 6 Pt 1 (not yet in force); and **CORONERS** vol 9(2) (2006 Reissue) PARA 987.

6 Juries Act 1974 s 20(2). As to the minimum requirements for a fair trial where a judge decides to deal with the case as if it were a contempt of court in the face of the court see *R v Dodds* [2002] EWCA Crim 1328, [2003] 1 Cr App Rep 60. As to criminal contempt of court see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 404 et seq.

7 See the Juries Act 1974 s 20(4) (as amended: see note 5). See *R v Tullet* [2008] EWCA Crim 2394, [2008] All ER (D) 238 (Oct), sub nom *R v DA* [2009] Crim LR 289 (where a juror gives explanation for non-attendance which is capable of being 'reasonable cause' (in this case, verbal abuse by other jurors), the judge or magistrates must address the explanation in determining whether an offence has been committed under the Juries Act 1974 s 20(1)).

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(1) NEED FOR JURY/819. Trial juries and juries of inquiry.

# 4. PROCEEDINGS BEFORE JURIES

## (1) NEED FOR JURY

### 819. Trial juries and juries of inquiry.

Trial juries are only used in the Crown Court, High Court or a county court[1]. Juries of inquiry are only used at an inquest[2].

1 As to trial by jury see PARA 801 note 1. As to the meaning of 'court' for the purposes of the Juries Act 1974 see PARA 804 note 1.

2 See the Coroners Act 1988 s 8(2) (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 s 8(3) (not yet in force); and **CORONERS** vol 9(2) (2006 Reissue) PARAS 978-987.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(1) NEED FOR JURY/820. When juries are required.

## 820. When juries are required.

Juries are or are not required according to the circumstances.

Generally, in causes in which issue is joined between the Crown and a person charged upon indictment, a jury is sworn to try the issues[1]. However, certain trials on indictment may now take place without a jury[2]. Where a defendant in the Crown Court advances a special plea of autrefois acquit or autrefois convict it was formerly for a jury to try that issue, but the issue is now decided by the judge sitting without a jury[3]. Where a court has determined that a defendant in the Crown Court is unfit to stand trial, the question of whether the defendant did the act or made the omission charged is determined by a jury[4].

In the Queen's Bench Division there is a right to a jury if:

16 (1) a charge of fraud[5] is made against the party applying for a jury; or
17 (2) a claim in respect of libel, slander, malicious prosecution or false imprisonment is in issue; or
18 (3) any question or issue of a kind prescribed[6] is raised,

unless the court or a judge is of the opinion that the trial requires a prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury[7]. In all other cases in the Queen's Bench Division it is in the discretion of the court or a judge to order trial with a jury[8], but in practice such an order is seldom made.

In the Chancery Division a jury is never required[9], nor used. The same is true in the Family Division.

Trial by jury in a county court is not permitted in respect of specified proceedings[10]. In all other proceedings in a county court the trial must be without a jury unless the court otherwise orders on an application by a party[11]. Where, on any such application, the court is satisfied that there is in issue:

19 (a) a charge of fraud[12] against the party applying for a jury; or
20 (b) a claim in respect of libel, slander, malicious prosecution or false imprisonment; or
21 (c) any question or issue of a kind prescribed[13],

the action must be tried with a jury, unless the court or a judge is of the opinion that the trial requires a prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury[14]. Trial by jury is now rare in county courts.

In certain circumstances a jury is required at an inquest[15].

1 For the procedure for the indictment of offenders see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1202 et seq.

2 See the Criminal Justice Act 2003 Pt 7 (ss 43-50); and PARA 821. As to the commencement of Pt 7 see PARA 821 note 1.

3 See the Criminal Justice Act 1988 s 122. As to pleas of autrefois acquit or autrefois convict see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1273-1275.

4 See the Criminal Procedure (Insanity) Act 1964 ss 4, 4A; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265. If an issue arises as to whether a defendant is mute of malice or by visitation of

God, that issue must be determined by a jury: see *R v Schleter* (1866) 10 Cox CC 409; *R v Sharp* [1960] 1 QB 357n, [1958] 1 All ER 62n; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1264.

5 An allegation of robbery is not a charge of fraud: *Barclays Bank Ltd v Cole* [1967] 2 QB 738, [1966] 3 All ER 948, CA. See also *Stafford Winfield Cook & Partners Ltd v Winfield* [1980] 3 All ER 759, [1981] 1 WLR 458 (for a case to come within the Senior Courts Act 1981 s 69(1) (see the text and note 7) fraud has to be an issue between the parties in the sense of being a question which has to be decided in order to determine the rights of the parties). As to applications by the prosecution for dispensing with a jury in trials on indictment for serious or complex fraud see the Criminal Justice Act 2003 s 43 (not yet in force); and PARA 821.

6 Ie prescribed under the Senior Courts Act 1981 s 69(1): see the text and note 7. At the date at which this volume states the law, no question or issue had been prescribed for these purposes.

7 Senior Courts Act 1981 s 69(1). The Senior Courts Act 1981 was previously known as the Supreme Court Act 1981 and was renamed by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 as from 1 October 2009: see the Constitutional Reform Act 2005 (Commencement No 11) Order 2009, SI 2009/1604; and **COURTS**.

See *Racz v Home Office* [1994] 2 AC 45, [1994] 1 All ER 97, HL (there is no logical similarity between the torts enumerated in the Senior Courts Act 1981 s 69(1), therefore the similarity of some other tort to any of those torts is not a factor which has to be taken into account by the court in determining whether it is appropriate to rebut the presumption against jury trial created by s 69(3) (see the text and note 8)).

As to when a libel claim is suitable for jury trial see *Rothermere v Times Newspapers Ltd* [1973] 1 All ER 1013, [1973] 1 WLR 448, CA; *Goldsmith v Pressdram Ltd* [1987] 3 All ER 485, [1988] 1 WLR 64n, CA; *Viscount De L'Isle v Times Newspapers Ltd* [1987] 3 All ER 499, [1988] 1 WLR 49, CA; *Beta Construction Ltd v Channel Four Television Co Ltd* [1990] 2 All ER 1012, [1990] 1 WLR 1042, CA. The fact that a case involves issues of integrity and honour, not merely credibility, might be a weighty consideration in ordering trial by jury at the instance of the party whose integrity and honour were impugned, but is not a sufficient ground for ordering a jury trial against his wishes at the instance of the other party: *Williams v Beesley* [1973] 3 All ER 144, [1973] 1 WLR 1295, HL.

As to when the right to a jury arises in a case concerning allegations of malicious prosecution, misfeasance in public office and conspiracy see *Taylor v Anderton (Police Complaints Authority intervening)* [1995] 2 All ER 420, [1995] 1 WLR 447, CA. It has been held that in determining whether a case was suitable for jury trial three issues had to be identified: (1) whether there would be a prolonged examination of documents; (2) if so, whether it could be conveniently made with a jury; and (3) if not, whether the court should nevertheless exercise its discretion to order trial with a jury: see *Phillips v Metropolitan Police Comr* [2003] EWCA Civ 382, [2003] 21 LS Gaz R 30 (allegations included false imprisonment and malicious prosecution; the necessity for a prolonged examination of the documents in the case was the decisive factor which made it unsuitable for jury trial).

As to the appropriateness of a jury at preliminary hearing see *Armstrong v Times Newspapers Ltd* [2006] EWCA Civ 519, [2006] 1 WLR 2462, (2006) Times, 7 July.

8 See the Senior Courts Act 1981 s 69(3). When a judge exercises his discretion and takes all the relevant considerations into account, the burden is on the party contesting the exercise of that discretion to show that the judge was wrong: *Hodges v Harland and Wolff Ltd* [1965] 1 All ER 1086, [1965] 1 WLR 523, CA. See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1132.

A jury will not be ordered in claims for personal injury unless there are exceptional circumstances: *Ward v James* [1966] 1 QB 273, [1965] 1 All ER 563, CA. Trial by jury is normally inappropriate for any personal injury claim in so far as the jury would be required to assess compensatory damages, because the jury would be unlikely to achieve compatibility with the conventional scale of awards: *H v Ministry of Defence* [1991] 2 QB 103, [1991] 2 All ER 834, CA.

For further examples as to the way in which the discretion has been exercised see *Hodges v Harland and Wolff Ltd* [1965] 1 All ER 1086, [1965] 1 WLR 523, CA; *Singh v London Underground* (1990) Independent, 25 April.

9 See *Stafford Winfield Cook & Partners v Winfield* [1980] 3 All ER 759, [1981] 1 WLR 458.

10 See the County Courts Act 1984 s 66(1); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1132.

11 See the County Courts Act 1984 s 66(2); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1132.

12 See note 5.

13 Ie prescribed under the County Courts Act 1984 s 66(3): see the text and note 14. At the date at which this volume states the law, no question or issue had been prescribed for these purposes.

14 See the County Courts Act 1984 s 66(3); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1132.

15 See the Coroners Act 1988 s 8(3) (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 s 7(2) (not yet in force); and **CORONERS** vol 9(2) (2006 Reissue) PARA 978 et seq.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(1) NEED FOR JURY/821. Trials on indictment without a jury.

## 821. Trials on indictment without a jury.

Provision is made[1] so that certain kinds of criminal trials that previously[2] took place on indictment in the Crown Court before a judge and jury may be conducted (or continued) by a judge sitting alone[3].

As from a day to be appointed, the prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury where one or more defendants is or are to be tried on indictment for one or more offences, and notice that the evidence reveals a case of serious or complex fraud has been given[4] in respect of that offence or those offences[5]. If such an application is made and the judge is satisfied that the complexity of the trial or the length of the trial (or both) is likely to make the trial so burdensome to the members of a jury hearing the trial that the interests of justice require that serious consideration should be given to the question of whether the trial should be conducted without a jury, then he may make an order that the trial is to be conducted without a jury; but if he is not so satisfied he must refuse the application[6].

Applications may now be made for a trial to be conducted by a judge sitting alone where there is evidence of jury tampering. The prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury where one or more defendants is or are to be tried on indictment for one or more offences[7]. If such an application is made and the judge is satisfied that:

22 (1) there is evidence of a real and present danger that jury tampering would take place[8]; and

23 (2) notwithstanding any steps (including the provision of police protection) which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury[9],

he must make an order that the trial is to be conducted without a jury; but if he is not so satisfied he must refuse the application[10].

The judge also has power to discharge a jury during a trial because of jury tampering[11]. Before taking any steps to discharge the jury, a judge who is minded during a trial on indictment to discharge the jury because jury tampering appears to have taken place must inform the parties that he is minded to discharge the jury, inform the parties of the grounds on which he is so minded, and allow the parties an opportunity to make representations[12]. Where the judge, after considering any such representations, discharges the jury, he may make an order that the trial is to continue without a jury if, but only if, he is satisfied that jury tampering has taken place and that to continue the trial without a jury would be fair to the defendant or defendants[13]. However, if he considers that it is necessary in the interests of justice for the trial to be terminated, the judge must terminate the trial[14]. Where the judge so terminates the trial, he may make an order that any new trial which is to take place must be conducted without a jury if he is satisfied in respect of the new trial that the conditions in heads (1) and (2) are both likely to be fulfilled[15]. Appeals from such orders[16] lie to the Court of Appeal[17].

The effect of an order under these provisions[18] is that the trial to which the order relates is to be conducted or continued without a jury[19]. Where a trial is conducted or continued without a jury, the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial had been conducted or continued with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury)[20]. Where a trial is conducted or continued without a jury and the court convicts a defendant, the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction[21].

Rules of court may make such provision as appears to the authority making them to be necessary or expedient for these purposes[22].

1 Ie by the Criminal Justice Act 2003 Pt 7 (ss 43-50). Part 7 is to be brought into force by order made under s 336(3). At the date at which this volume states the law, only ss 44-49 had been brought into force: see the Criminal Justice Act 2003 (Commencement No 2 and Saving Provisions) Order 2004, SI 2004/81, art 4; and the Criminal Justice Act 2003 (Commencement No 13 and Transitional Provision) Order 2006, SI 2006/1835.

2 See PARA 820.

3 See the Criminal Justice Act 2003 Pt 7; and the text and notes 4-22. Nothing in Pt 7 affects the requirement under the Criminal Procedure (Insanity) Act 1964 s 4A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265) that any question, finding or verdict mentioned in that provision be determined, made or returned by a jury: Criminal Justice Act 2003 s 48(6) (amended by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 60).

4 Ie under the Crime and Disorder Act 1998 s 51B: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1134.

5 Criminal Justice Act 2003 s 43(1), (2) (not yet in force). At the date at which this volume states the law, no day had been appointed for the commencement of s 43. See note 1.

In the case of an application under s 43, the application must be determined at a preparatory hearing (within the meaning of the Criminal Justice Act 1987: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1250): Criminal Justice Act 2003 s 45(1)(a), (2). The parties to a preparatory hearing at which such an application is to be determined must be given an opportunity to make representations with respect to the application: s 45(3). As to procedure and appeals see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1247 et seq.

6 Criminal Justice Act 2003 s 43(3), (5) (not yet in force). In deciding whether or not he is satisfied that the condition is fulfilled, the judge must have regard to any steps which might reasonably be taken to reduce the complexity or length of the trial, but a step is not to be regarded as reasonable if it would significantly disadvantage the prosecution: s 43(6), (7) (not yet in force). The judge must not make an order under s 43 for trial without a jury without the approval of the Lord Chief Justice or a judge nominated by him: s 43(4) (not yet in force).

7 Criminal Justice Act 2003 s 44(1), (2). In the case of an application under s 44, the application must be determined at a preparatory hearing (within the meaning of the Criminal Procedure and Investigations Act 1996 Pt 3 (ss 28-38): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1250): Criminal Justice Act 2003 s 45(1)(b), (2). The parties to a preparatory hearing at which such an application is to be determined must be given an opportunity to make representations with respect to the application: s 45(3). As to procedure and appeals see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1247.

8 Criminal Justice Act 2003 s 44(4). The following are examples of cases where there may be evidence of a real and present danger that jury tampering would take place: (1) a case where the trial is a retrial and the jury in the previous trial was discharged because jury tampering had taken place; (2) a case where jury tampering has taken place in previous criminal proceedings involving the defendant or any of the defendants; (3) a case where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial: s 44(6). The list in s 44(6) is not exhaustive or exclusive; just because particular facts fall within s 44(6) does not conclusively establish the condition in s 44(4), nor does it create a presumption in favour of trial without a jury; the examples in s 44(6) indicate that the evidence which may demonstrate the statutory danger is not to be confined to evidence which would be admissible at the defendant's trial: see *R v T* [2009] EWCA Crim 1035, [2009] 3 All ER 1002, sub nom *R v Twomey* [2009] 2 Cr App Rep 412 (where it was held that the trial should be conducted without a jury because of the danger of jury tampering). The standard of proof for the

purposes of the Criminal Justice Act 2003 s 44(4), (5) is the criminal standard: see *R v T* [2009] EWCA Crim 1035, [2009] 3 All ER 1002, sub nom *R v Twomey* [2009] 2 Cr App Rep 412.

9 Criminal Justice Act 2003 s 44(5). As to the standard of proof see note 8. Section 44(5) requires that, after making due allowance for any reasonable steps which might address or minimise the danger of jury tampering, the judge should be sure that there would be a sufficiently high likelihood of jury tampering to make a judge-alone trial necessary; relevant matters for consideration are the feasibility of the measures, the cost of providing them, the logistical difficulties that they might give rise to, and the anticipated duration of any necessary precautions: *R v T* [2009] EWCA Crim 1035, [2009] 3 All ER 1002, sub nom *R v Twomey* [2009] 2 Cr App Rep 412.

10 Criminal Justice Act 2003 s 44(3).

11 See the Criminal Justice Act 2003 s 46; and see also *R v T* [2009] EWCA Crim 1035, [2009] 3 All ER 1002, sub nom *R v Twomey* [2009] 2 Cr App Rep 412.

12 Criminal Justice Act 2003 s 46(1), (2).

13 Criminal Justice Act 2003 s 46(3). Save in exceptional circumstances, the judge should order that the trial continue without a jury; the fact that the judge has been invited to consider material covered by public interest immunity principles should not normally lead to self-disqualification: *R v T* [2009] EWCA Crim 1035, [2009] 3 All ER 1002, sub nom *R v Twomey* [2009] 2 Cr App Rep 412.

14 Criminal Justice Act 2003 s 46(4).

15 Criminal Justice Act 2003 s 46(5). This provision is without prejudice to any other power that the judge may have on terminating the trial: s 46(6). Subject to s 46(5), nothing in s 46 affects the application of s 43 (see the text and notes 4-6) or s 44 (see the text and notes 7-10) in relation to any new trial which takes place following the termination of the trial: s 46(7).

16 Ie orders under the Criminal Justice Act 2003 s 46(3) (see the text and note 13) or s 46(5) (see the text and note 15).

17 Criminal Justice Act 2003 s 47(1). Such an appeal may be brought only with the leave of the judge or the Court of Appeal: s 47(2). An order from which an appeal under s 47 lies is not to take effect: (1) before the expiration of the period for bringing an appeal under s 47; or (2) if such an appeal is brought, before the appeal is finally disposed of or abandoned: s 47(3). On the termination of the hearing of an appeal under s 47, the Court of Appeal may confirm or revoke the order: s 47(4). Subject to rules of court made under the Senior Courts Act 1981 s 53(1) (power by rules to distribute business of Court of Appeal between its civil and criminal divisions: see **COURTS** vol 10 (Reissue) PARAS 639-640), the jurisdiction of the Court of Appeal under the Criminal Justice Act 2003 s 47 is to be exercised by the criminal division of that court, and references in s 47 to the Court of Appeal are to be construed as references to that division: s 47(5) (amended by the Constitutional Reform Act 2005 Sch 11 para 1(2)). The Senior Courts Act 1981 was previously known as the Supreme Court Act 1981 and was renamed by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 as from 1 October 2009: see the Constitutional Reform Act 2005 (Commencement No 11) Order 2009, SI 2009/1604; and **COURTS**.

18 Ie the Criminal Justice Act 2003 Pt 7.

19 Criminal Justice Act 2003 s 48(1), (2).

20 Criminal Justice Act 2003 s 48(3). Except where the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted or continued without a jury, as a reference to the court, the verdict of the court or the finding of the court: s 48(4).

21 Criminal Justice Act 2003 s 48(5)(a).

22 Criminal Justice Act 2003 s 49(1). Without limiting s 49(1), rules of court may in particular make provision for time limits within which applications under Pt 7 must be made or within which other things in connection with Pt 7 must be done: s 49(2). Nothing in s 49 is to be taken as affecting the generality of any enactment conferring powers to make rules of court: s 49(3). At the date at which this volume states the law, no rules had been made under s 49.

### 822. Trial by jury of sample counts only.

The prosecution may apply to a judge of the Crown Court for a trial on indictment to take place on the basis that the trial of some but not all of the counts included in the indictment may be conducted without a jury[1]. The judge may make an order, if satisfied that certain conditions are met, for the counts included in the indictment to be conducted without a jury[2]. The effect of such an order is that where a defendant is found guilty by a jury on a count which can be regarded as a sample of other counts to be tried in those proceedings, those other counts may be tried without a jury in those proceedings[3]. Where the trial of a count is conducted without a jury, and the court convicts the defendant, the court must give a judgment which states the reasons for the conviction as soon as reasonably practicable[4].

1 See the Domestic Violence, Crime and Victims Act 2004 s 17; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1285.

2 See the Domestic Violence, Crime and Victims Act 2004 s 17; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1285.

3 See the Domestic Violence, Crime and Victims Act 2004 s 19; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1285.

4 See the Domestic Violence, Crime and Victims Act 2004 s 18; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1285.

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## (2) SELECTION OF JURY

### 823. The ballot.

The jury to try an issue before a court is selected by ballot in open court from the panel[1], or part of the panel, of jurors summoned[2] to attend at the time and place in question[3].

The jury selected by any one ballot must generally try only one issue[4], but it may try two or more issues if the trial of the second or last issue begins within 24 hours from the time when the jury is constituted[5]. On the trial of the second or any subsequent issue the court may, instead of proceeding with the same jury in its entirety, order any juror to withdraw if the court considers he could be justly challenged or excused or if the parties to the proceedings consent; and the juror to replace him must be selected by ballot in open court[6].

1 As to panels see PARA 816.

Formerly, it was the invariable practice of the courts for the names of the jurors selected by ballot to be read out in open court. Where names are read out, it is not necessary that the names should be called in the order in which they stand in the panel: *Mansell v R* (1857) Dears & B 375, Ex Ch. If the clerk of the court calls into the jury box AB, whose name is in the panel, and YZ, whose name is also in the panel, goes into the jury box by mistake and is sworn in the name of AB and sits with the other jurors at the trial of a defendant, and the defendant is convicted, the mistake is not a ground for quashing the conviction (*R v Mellor* (1858) Dears & B 468, CCR) where it is not shown that, but for the misnomer, the defendant would have successfully challenged the juror (*R v Bottomley* (1922) 16 Cr App Rep 184, 127 LT 847, CCA). Where, however, a person not called as a juror personates a juror and sits in his place, the trial is a nullity and a venire de novo (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1895) will be ordered: *R v Wakefield* [1918] 1 KB 216, 13 Cr App Rep 56, CCA.

Now, however, where there is a risk of juror interference then jurors may be assigned numbers which are called out: *R v Comerford* [1998] 1 All ER 823, [1998] 1 WLR 191, CA.

2 As to summoning of jurors see PARA 813.

3 Juries Act 1974 s 11(1). The power of summoning jurors under s 6 (see PARA 817) may be exercised after balloting has begun, as well as earlier; if exercised after balloting has begun, the court may dispense with balloting for persons summoned under s 6: s 11(2).

4 Juries Act 1974 s 11(4). However, any juror is liable to be selected on more than one ballot: s 11(4). See *R v B* [2008] EWCA Crim 1997, [2009] 1 WLR 1545, [2009] 1 Cr App Rep 261 (the Juries Act 1974 s 11(4) does not prevent a jury from determining whether one defendant was guilty of a charge in an indictment at the same time as determining whether a co-defendant who has been determined to be unfit to stand trial did the act charged against him on the same indictment).

5 Juries Act 1974 s 11(5)(a). In a criminal case beginning with a special plea (ie a plea to the jurisdiction or a plea of pardon), the same jury may try the special plea as well as the general issue (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1269 et seq): Juries Act 1974 s 11(5)(c).

6 Juries Act 1974 s 11(6) (amended by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 8(1), (3), Sch 11). This provision is subject to the Juries Act 1974 s 11(2) (see note 3): see s 11(6) (as so amended).



## 824. Composition of jury.

Traditionally, a jury consists of 12 persons, but this is no longer always the case[1].

It may be appropriate for a judge to excuse a juror from a particular case if he is personally concerned in the facts of the particular case, or closely connected with a party to the proceedings or with a prospective witness[2].

An unqualified juror[3], although he is not challenged[4] by either party, may object to serve and, if the court finds that he is not qualified, he will be ordered to stand down[5].

The court has power to refuse to allow to be sworn any juror who from physical or mental infirmity, temporary or permanent, is incapable of duly attending to the evidence[6].

A judge may not order a jury to be composed of persons from a particular ethnic group or from a particular section of the community[7]; and there is no requirement in law that there should be a black member of a jury or of a jury panel[8].

1 See PARA 803.

2 *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.42.2, CA; *Amendment to the Consolidated Criminal Practice Direction (Jury service)* [2005] 3 All ER 89, sub nom *Practice Direction (Crown Court: Jury Service)* [2005] 1 WLR 1361 at IV.42.2, CA. As to the discretion to excuse a person from jury service generally, rather than from a particular case, see PARA 806. Where a juror with professional and public service commitments applies to the court to be excused, the application must be considered with common sense and according to the interests of justice; an explanation should be required for an application being much later than necessary: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.42.1, CA; *Amendment to the Consolidated Criminal Practice Direction (Jury service)* [2005] 3 All ER 89, sub nom *Practice Direction (Crown Court: Jury Service)* [2005] 1 WLR 1361 at IV.42.1, CA. As to the situation where a juror unexpectedly finds himself in difficult professional or personal circumstances during the course of the trial see *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.42.3, CA; *Amendment to the Consolidated Criminal Practice Direction (Jury service)* [2005] 3 All ER 89, sub nom *Practice Direction (Crown Court: Jury Service)* [2005] 1 WLR 1361 at IV.42.3, CA.

3 As to qualification and disqualification as a juror see PARAS 804-805.

4 As to challenges see PARA 825 et seq. That a juror is not qualified to serve is a ground for challenge for cause: see PARA 831.

5 *R v Lord Grey* (1682) 9 State Tr 127; *R v Cook* (1696) 13 State Tr 311 at 313, 318.

6 *Mansell v R* (1857) 8 E & B 54 at 81, 109, Ex Ch; and see *R v Chandler (No 2)* [1964] 2 QB 322, 48 Cr App Rep 143, CCA. As to the power of the judge to discharge a person summoned for jury service on account of physical disability see PARA 833.

7 See *R v Ford* [1989] QB 868, 89 Cr App Rep 278, CA. See further PARA 816 note 2.

8 See *R v Danvers* [1982] Crim LR 680, CA; *R v Ford* [1989] QB 868, 89 Cr App Rep 278, CA; and PARA 826 text and note 5.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(3) CHALLENGES/(i) In general/825. Right to challenge.

## (3) CHALLENGES

## (i) In general

### 825. Right to challenge.

The right to challenge refers to the right to object to a person or persons called to serve on a jury. It arises upon a full body of jurors being assembled in the jury box[1]. Challenge is of two kinds: (1) challenge to the array (that is, to the whole number of persons in the panel)[2]; and (2) challenge to the polls (that is, to individual jurors)[3]. The right to challenge may be exercised by any party, which includes the Crown[4]. The challenge must be for cause (that is, for a definite reason assigned and proved)[5].

In criminal cases, the defendant is informed of his right to challenge by the clerk of the court[6]. Because the right to challenge postulates that the trial has already begun[7] there is no right to challenge jurors empanelled to try collateral issues before a criminal trial commences[8].

Any party to county court proceedings to be tried by a jury has the same right of challenge to all or any of the jurors as he would have in the High Court[9].

No challenge may be made of jurors at an inquest[10].

A challenge to the array must be made before any juror is sworn[11]; a challenge to the polls must be made after the juror's name has been drawn (unless the court has dispensed with balloting for him[12]) and before he is sworn[13]. The function of the defendant's right of challenge is not to provide a jury which is in a positive sense acceptable to him, but one which is free from elements which he may regard as objectionable[14].

If a juror is unchallenged and is sworn, he cannot afterwards be challenged on the ground of partiality[15].

1 *Vicars v Langham* (1618) Hob 235, Ex Ch; *R v Edmonds* (1821) 4 B & Ald 471 at 473; *Barrett v Long* (1851) 3 HL Cas 395 at 410.

2 As to challenge to the array see PARAS 826-828.

3 As to challenge to the polls see PARA 829 et seq.

4 As to the exercise of the right of challenge by the Crown see PARA 830.

5 The defendant's peremptory challenge, which was the right to challenge jurors without cause in criminal trials, has been abolished: Criminal Justice Act 1988 s 118(1); and see eg *R v Cornwall* [2009] EWCA Crim 2458, [2009] All ER (D) 290 (Nov). There is no right to make peremptory challenges in a civil case: *Creed v Fisher* (1854) 9 Exch 472. As to the Crown's power to ask that a juror stand by for the Crown see PARA 830.

6 However, failure to inform the defendant of his right to challenge does not necessarily amount to a denial of his right: see *R v Berkeley* [1969] 2 QB 446, [1969] 3 All ER 6, CA; and PARA 834 note 2.

7 See the Juries Act 1974 s 12.

8 See *R v Ratcliffe* (1746) 18 State Tr 429 (jury trying issue whether defendant was person previously convicted who had escaped). Thus there is no right of challenge under the Juries Act 1974 s 12 where a jury is empanelled to determine whether the defendant is mute of malice (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1264) or by visitation of God or whether a special plea to the jurisdiction or of pardon is established: *R v Paling* (1978) 67 Cr App Rep 299, CA.

9 Juries Act 1974 s 12(2). As to the right to make a challenge to the array in the High Court see PARAS 826-828; and as to the right to make a challenge to the polls in the High Court see PARA 829 et seq.

10 *R v Ingham* (1864) 5 B & S 257 at 276 per Blackburn J.

11 See *R v Frost* (1839) 9 C & P 129 at 122.

12 Ie under the Juries Act 1974 s 11(2): see PARA 823.

13 See the Juries Act 1974 s 12(3). The practice is to permit challenges, as a matter of discretion, to be taken up until the juror has completed the oath or affirmation: see *R v Harrington, R v Hanlon* (1976) 64 Cr App Rep 1, CA.

14 See also *Mansell v R* (1857) 8 E & B 54 at 79, Ex Ch (until given in charge, when he must be tried by that jury, a defendant has no right to be tried by any particular jurors).

15 *R v Wardle* (1842) Car & M 647. In an appropriate case, however, the trial judge may discharge a juror, or the whole jury: see eg PARA 845.

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## (ii) Challenge to the Array

### 826. Challenge to the array.

Challenge to the array is the taking of exception to the whole panel; it is a right of challenge on the ground that the person responsible for summoning the panel of jurors in question is biased or has acted improperly[1]. It is commonly divided into the following two classes:

24 (1) principal challenge, where the summoning officer is in a position inconsistent with impartiality[2], as by being party to the claim[3], related to one of the parties, having empanelled certain persons at the request of one of the parties or having a claim pending against him by either party; and

25 (2) challenge for favour, where the position of the summoning officer is not necessarily inconsistent with impartiality, but may be suspected[4].

The racial composition of a jury is not a ground for challenging the array[5]. Nor can the fact that the Attorney General has vetted the panel, in accordance with his guidelines, afford grounds for a challenge to the array[6].

Challenges to the array are very rare.

1 See the Juries Act 1974 s 12(6). This right is not affected by the transfer of responsibility for summoning jurors to officers appointed by the Lord Chancellor (ie under the Courts Act 1971 s 31 (repealed): see now the Juries Act 1974 s 2(1); and PARA 813): s 12(6). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. However, the vesting of that responsibility in the Lord Chancellor has made the possibility of a challenge to the array extremely remote.

2 *O'Connell v R* (1844) 11 Cl & Fin 155, HL.

3 *R v Sheppard* (1773) 1 Leach 101; and see *Baylis v Lucas* (1779) 1 Cowp 112; *Mason v Vickery* (1804) 1 Smith KB 304, where the summoning officer was attorney for a party to the cause.

4 Eg it is a principal challenge if the officer is of kin or affinity to one of the parties, but a challenge for favour if there is affinity between his son and a party's daughter: Co Litt 156a.

5 *R v Danvers* [1982] Crim LR 680, CA; *R v Ford* [1989] QB 868, [1989] 3 All ER 445, CA. In so far as *R v Thomas* (1989) 88 Cr App Rep 370 suggests there is a discretion it ought not to be followed: *R v Ford*.

6 *R v McCann* (1991) 92 Cr App Rep 239, [1991] Crim LR 136, CA. As to the Attorney General's guidelines see PARA 830.



## 827. Procedure.

A challenge to the array must be in writing and the other party may respond in writing[1].

If both parties challenge the array or the matters constituting cause of challenge are admitted, it is the court's duty to quash the array[2]. The court must order the summoning officer (or, if a similar challenge prevails against his jury, two elisors or electors nominated by the jury) to return a new panel[3]. No challenge to the array can be taken against the panel returned by the elisors[4].

If the facts alleged are controverted, the court nominates two 'triers', who may be persons summoned as jurors, to ascertain them upon oath[5], and, if they do not constitute cause of principal challenge, to try further whether the array be impartial or favourable[6]. On the challenge being on either ground upheld, the judge must quash the array and a new panel must be ordered[7]. If there is a challenge to the fresh array, and that array is quashed, the jury nominates two elisors or electors to return a panel; and to this array no challenge is allowed[8].

1 *Carmarthen Corpn v Evans* (1842) 10 M & W 274. See also *R v Edmonds* (1821) 4 B & Ald 471 at 474; and see *R v Hughes* (1843) 1 Car & Kir 235. For the form of a challenge to the array see *R v Smith O'Brien* (1849) 7 State Tr NS 1; *R v O'Connell* (1844) 5 State Tr NS 1, 69, HL.

2 Co Litt 156a; Duncombe's Trials per Pais (8th Edn) 174.

3 *R v Dolby* (1823) 2 B & C 104; Co Litt 158a; 3 Bl Com (14th Edn) 354.

4 Co Litt 158a; 3 Bl Com (14th Edn) 354. However, a challenge to the polls can be taken: see PARA 829.

5 The person challenging the array, as also the challenger of a poll, must give prima facie evidence of cause: *R v Savage* (1824) 1 Mood CC 51; *R v Hughes* (1843) 1 Car & Kir 235.

6 *R v Dolby* (1823) 2 B & C 104; *R v Swain* (1838) 2 Lew CC 116.

7 Co Litt 156a. The quashing of an array upon a successful challenge is a matter of right, and not of the court's discretion: *R v Edmonds* (1821) 4 B & Ald 471 at 473.

8 Co Litt 158a.

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### 828. Time for challenge.

A challenge to the array must be made promptly[1] and must contain every cause of objection[2]. Every cause of challenge, whether to the array or to the polls, ought to be propounded in such a way that the opposite party may have an opportunity of controverting the facts alleged[3] and of appealing from a decision of the court[4].

1 It should be made if possible before the jury is sworn: *Brunskill v Giles* (1832) 9 Bing 13. For the principle that the court will not order a new trial on grounds which would have supported a challenge to the array see PARA 835.

2 Once a challenge to the array has been tried there cannot be challenge for another cause. For a form of challenge to the array see *R v Dolby* (1821) 1 Car & Kir 238.

3 In *O'Brien v R* (1849) 2 HL Cas 465 at 469, a challenge to the array was followed by a plea, a replication and a rejoinder (an Irish criminal case).

4 *R v Edmonds* (1821) 4 B & Ald 471 at 474.

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## (iii) Individual Jurors: Challenge to the Polls

### 829. Challenge to the polls, procedure.

Challenge to the polls is exception taken for cause to individual members of a jury before they are sworn; and, in proceedings for the trial of any person for an offence on indictment, he[1] or the prosecution may challenge all or any of the jurors for cause.

The right to challenge to the polls is unlimited[2]. The challenge ought not to be made before the full jury has been called to the jury box[3]. The challenge should be made before the juror is sworn[4]. Strictly this means before the swearing of the juror begins (that is, before the book is given into the hands of the juror and the reading of the oath begins)[5], but there is a discretion to permit a challenge after the commencement but before the conclusion of the reading of the oath[6].

The defendant must conclude his challenges before the Crown can be required to justify its challenges[7]. In civil causes, whichever party first challenges must justify every challenge before the other party can be required to do so[8].

The challenge is tried by the trial judge[9]. A judge sitting in the Crown Court may order that a challenge for cause is to be heard in court in private or in chambers[10]. Failure to exercise a challenge through ignorance of a fact may afford a ground of appeal in a criminal case[11].

Every cause of challenge to the polls ought to be propounded in such a way that the opposite party may have an opportunity of controverting the facts alleged and of appealing from a decision of the court[12].

If the challenge for cause is allowed, the juror is ordered to stand down and a fresh juror is called[13].

1 Where several defendants are tried together, the practice is for each to assert his rights of challenge as if he were being separately tried; and if it seems that the total challenges to the polls may exhaust the panel of jurors, the judge may direct a separate trial of one or some of the defendants while a complete jury remains available. It is, however, no longer the practice to sever the trial if the defendants do not join in their challenges: see *R v Ram and Ram* (1893) 17 Cox CC 609; Fost 106; 2 Hale PC 268. In *R v Fisher* (1848) 3 Cox CC 68, Platt B said that it was an 'ill practice to allow the challenges to be severed' for the purposes of giving each defendant a separate trial.

2 See the Juries Act 1974 s 12(1)(a) (amended by the Criminal Justice Act 1988 Sch 16); and see also *R v Geach* (1840) 9 C & P 499.

3 See *R v Edmonds* (1821) 4 B & Ald 471; and PARA 825.

4 See the Juries Act 1974 s 12(3); and PARA 825.

5 *R v Brandeth* (1817) 32 State Tr 755; *R v Frost* (1839) 9 C & P 129 at 137; *R v Giorgetti* (1865) 4 F & F 546.

6 *R v Harrington* (1976) 64 Cr App Rep 1, CA.

7 Hawk PC (8th Edn) 569. As to challenges by the Crown see PARA 830.

8 See Duncombe's Trials per Pais (8th Edn) 189-190, where the time to challenge is exhaustively dealt with. There is the same right to challenge in a county court as in the High Court: see the Juries Act 1974 s 12(2); and PARA 825 note 8.

9 Juries Act 1974 s 12(1)(b). The juror is called into the box and examined as to cause, but in the exceptional circumstances in *R v Kray* (1969) 53 Cr App Rep 412, the trial judge allowed the defendant's counsel to indicate the cause on which he was relying and gave his ruling before any juror came into court. There must be a foundation of fact creating a prima facie case of probability of prejudice before the prospective juror may be cross-examined: *R v Kray* (1969) 53 Cr App Rep 412; *R v Chandler* [1964] 2 QB 322, 48 Cr App Rep 143, CCA.

10 See the Criminal Justice Act 1988 s 118(2).

11 *R v Pennington* (1985) 149 JP 615, 81 Cr App Rep 217, CA, in which the appeal was dismissed. It is thought that fresh material of bias would need to be compelling before the Court of Appeal would intervene: see *R v Bliss* (1987) 84 Cr App Rep 1, [1986] Crim LR 467, CA.

12 *R v Edmonds* (1821) 4 B & Ald 471 at 474. As to the principal causes of challenge to the polls see PARA 831.

13 If the panel is exhausted, the court may exercise its powers to order people in its vicinity to be summoned: see PARA 817.

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## 830. Position of the Crown.

In addition to its power to challenge a juror or jurors for cause[1], the Crown[2] may also direct any person whose name is called to stand by[3] until the panel has been called over and exhausted[4], and will not be put to assign cause[5] until it appears that there will not be a full jury without recourse to that person[6].

The Crown should assert its right to stand by only on the basis of clearly defined and restrictive criteria[7]. The circumstances in which it would be proper for the Crown to exercise that right are:

26 (1) where a jury check authorised in accordance with the Attorney General's guidelines on jury checks[8] reveals information justifying the exercise of that right and its exercise is personally authorised by the Attorney General; or

27 (2) where a person is about to be sworn as a juror who is manifestly unsuitable and the defence agrees that accordingly the exercise by the Crown of the right to stand by is appropriate[9].

An example of the exceptional circumstances which might justify the exercise of the right is where it becomes apparent that a juror selected for service to try a complex case is in fact illiterate[10].

Searches of criminal records for the purpose of ascertaining whether or not a jury panel includes any disqualified person may be carried out by the police[11]. In cases involving national security where part of the evidence is likely to be heard in private, and in terrorist cases, further investigations may be made, but only with the personal authority of the Attorney General on the application of the Director of Public Prosecutions[12]. No right of stand by should be exercised by the Crown on the basis of information obtained as a result of such authorised checks save with the personal authority of the Attorney General and unless the information is such as to afford strong reason for believing that a particular juror might be a security risk, be susceptible to improper approaches or be influenced in arriving at a verdict[13].

1 Juries Act 1825 s 29 (amended by the Statute Law Revision (No 2) Act 1988; the Courts Act 1971 Sch 4 para 3(2); and the Criminal Justice Act 1948 Sch 10 Pt I); Juries Act 1974 s 12(5). The Crown's right to peremptory challenge was abolished by 33 Edw 1 c 2 (Ordinatio de Inquisicionibus) (1305) (repealed). See also *R v Frost* (1839) 9 C & P 129; *Mansell v R* (1857) 8 E & B 54 at 70-71, Ex Ch, per Lord Campbell CJ.

2 The defendant has no such right: *R v Chandler* [1964] 2 QB 322, 48 Cr App Rep 143, CCA.

3 2 Hale PC 271; 2 Hawk PC (8th Edn) 569; *R v Frost* (1839) 9 C & P 129; *R v Geach* (1840) 9 C & P 499. So, too, may an individual who prosecutes in the name of the Crown: *R v M'Gowan* (1858) unreported, but cited in *R v M'Cartie* (1859) 11 ICLR 188 at 206-207.

4 It seems that this will not be until every proper attempt has been made to secure the presence of those on the panel whose duty it is to attend: *Mansell v R* (1857) 8 E & B 54 at 104, Ex Ch, per Cockburn CJ. Thus if 12 jurors whose names are on the panel are discharged in another case, and become available, the Crown may require their names to be called before recourse is again had to those who have been ordered to stand by: *Mansell v R*.

5 Ie to make a challenge to the polls: see PARA 829.

6 *Mansell v R* (1857) 8 E & B 54, Ex Ch; followed in *R v Mason* [1981] QB 881, [1980] 3 All ER 777, CA.

7 *Practice Note* [1988] 3 All ER 1086, 88 Cr App Rep 123 (Attorney General's guidelines on the exercise by the Crown of its right of stand by).

8 See *Practice Note* [1988] 3 All ER 1086 at 1087, 88 Cr App Rep 123 at 124. Jury checks in accordance with the guidelines, and the exercise by the Attorney General of his right to stand by, are not unconstitutional: *R v McCann* (1990) 92 Cr App Rep 239, [1991] Crim LR 136, CA.

9 *Practice Note* [1988] 3 All ER 1086, 88 Cr App Rep 123.

10 *Practice Note* [1988] 3 All ER 1086, 88 Cr App Rep 123.

11 *Practice Note* [1988] 3 All ER 1086 at 1087, 88 Cr App Rep 123 at 124 (Attorney General's guidelines on jury checks); and see the recommendations of the Association of Chief Police Officers in respect of checks on criminal records, annexed to this practice note.

12 *Practice Note* [1988] 3 All ER 1086 at 1087, 88 Cr App Rep 123 at 124.

13 *Practice Note* [1988] 3 All ER 1086 at 1087, 88 Cr App Rep 123 at 124.

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## 831. Causes of challenge.

The principal causes of challenge to the polls are two in number[1]:

28 (1) where the person called does not possess the necessary qualifications[2]; and
29 (2) where there is actual or presumed bias on the part of an individual member of the jury[3].

1 Co Litt 156b. The Juries Act 1974 does not affect the law relating to challenge of jurors, except as mentioned in s 12(4) (see the text and note 2): s 12(4).

2 Juries Act 1974 s 12(4). As to the qualifications see Sch 1; and PARAS 804-805. A disqualification not discovered until after the verdict would not be ground for a new trial: *Peermain v Mackay* (1845) 9 Jur 491.

3 Some prima facie evidence of bias must be given before the person challenged can be examined on the voire dire: *R v Dowling* (1848) 3 Cox CC 509; *R v Chandler (No 2)* [1964] 2 QB 322, [1964] 1 All ER 761, CCA. As to examination upon the voire dire see PARA 832. It is now unusual for a challenge for cause on grounds of bias to be made; actual or presumed bias is normally dealt with under the judge's power to stand jurors down (see PARA 842). The mere fact that there has been a previous trial resulting in a verdict adverse to the defendant and that this has been widely reported in the press with comments on the evidence does not ordinarily provide a case of probable bias or prejudice in jurors empanelled on a later trial. It may be otherwise where newspapers, knowing that there is to be a subsequent trial, have widely publicised discreditable allegations whether of fact or fiction: *R v Kray* (1969) 53 Cr App Rep 412.

In *R v Wilson* [1995] Crim LR 952, CA, a retrial was ordered after a challenge in respect of a juror married to a prison officer serving a prison where the appellants were on remand was refused.

The questioning of potential jurors by the use of a questionnaire to establish whether they are biased ought to be avoided save in most exceptional circumstances: *R v Andrews (Tracey)* [1999] Crim LR 156, (1998) 142 Sol Jo LB 268, CA.

As to challenge to the array where a jury has been empanelled by a partial person see PARA 826. As to the discharge of a juror on the grounds of bias see PARA 842.

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## 832. Examination upon the voire dire.

A person challenged may be examined upon oath[1], which is called examination upon the voire dire, as to the matters alleged concerning him[2], except as to whether he has expressed an opinion unfavourable to one of the parties[3] or if the cause of challenge touches his dishonour or discredit[4].

1 The special form of oath is: 'I swear by Almighty God that I will true answer make to all such questions as the court shall demand of me'. In the case of an affirmation the wording could be: 'I do solemnly, sincerely and truly declare and affirm that I will true answer make to all such questions as the court shall demand of me'.

2 *R v Cook* (1696) 13 State Tr 311. There must be a foundation of fact creating a prima facie case of probability of prejudice before the prospective juror can be cross-examined: *R v Chandler (No 2)* [1964] 2 QB 322, [1964] 1 All ER 761, CCA; *R v Kray* (1969) 53 Cr App Rep 412. The mere fact that a previous trial ending in a verdict adverse to the defendant has been reported at length in the press, with comments on the evidence, should not ordinarily provide a case of probable bias in jurors on a later trial of the defendant, but where

newspapers had revived discreditable allegations from the defendant's past, which might be either fact or fiction and which had been publicised over a wide area, a prima facie case of probability of prejudice has been established and defending counsel is entitled to apply to be allowed to examine the jurors as they enter the box to be sworn: *R v Kray*.

3 *R v Edmonds* (1821) 4 B & Ald 471 at 490.

4 Co Litt 158b; *R v Cook* (1696) 13 State Tr 311 at 334; *R v Martin* (1848) 6 State Tr NS 925. The court has refused to let a juror be asked whether he belonged to an association for prosecuting frauds upon tradesmen: *R v Stewart* (1845) 1 Cox CC 174.

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## (iv) Incompetent Persons; Defects in Challenges

### 833. Incompetent persons.

On the trial of a criminal issue, without challenge by the Crown or on the defendant's behalf, the judge may refuse to allow to be sworn any juror who from physical or mental infirmity, temporary or permanent, is incapable of duly attending to the evidence[1]. This common law power has been supplemented by statute[2].

1 *Mansell v R* (1857) 8 E & B 54 at 81, 109, Ex Ch.

2 See the Juries Act 1974 ss 9B, 10; and PARA 806.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(3) CHALLENGES/(iv) Incompetent Persons; Defects in Challenges/834. Effect of improper disallowance of challenge.

### 834. Effect of improper disallowance of challenge.

The improper disallowance of a challenge renders the subsequent proceedings before the jury absolutely void, and is ground for a new trial being ordered on appeal, by a writ of venire de novo in the case of criminal proceedings[1]. Therefore, it is not within the province of the appellate court to consider whether the person complaining has been prejudiced and to exercise a discretion as to granting a new trial[2].

1 Where a trial has been a nullity, the Court of Appeal may order a venire de novo: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1895. The writ or order of venire de novo must be in such form as the court issuing it considers appropriate: Juries Act 1974 s 21(4). However, if the trial is not rendered a nullity, a mistrial will result in the conviction being quashed: see *R v Taylor* [1950] NI 57, CCA; *R v Gash* [1967] 1 All ER 811, [1967] 1 WLR 454, CA.

2 *R v Edmonds* (1821) 4 B & Ald 471 at 473 per Abbott CJ; *R v Williams* (1925) 19 Cr App Rep 67, CCA; *R v Wilson* [1995] Crim LR 952, CA (see PARA 831); but see *R v Berkeley* [1969] 2 QB 446, [1969] 3 All ER 6, CA (where the defendant was represented in court, and no objection was taken when his right of challenge was not explained to him; it was held that this was not a case of denial to a man of his right to challenge, but was merely a failure to follow what has been a long-continued practice of informing a defendant of the existence of that right).

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### 835. Effect of omission to challenge.

The court will only order a new trial on an application based on fact which would have constituted a ground for a challenge to the array at the original trial if it is shown that the facts were unknown at the time of the trial to the person making the application[1]. If facts relating to the qualification of a juror which would have constituted grounds for a challenge for cause become known to a party only after the trial, the court will normally only make an order of venire de novo[2] where there has been a personation of a juror or a mistake as to identity[3].

1 *Brunskill v Giles* (1832) 9 Bing 13. The fact that the attorney for the defendant was under-sheriff and had summoned the jury has been held to be no ground for new trial after a verdict for the defendant: *Mason v Vickery* (1804) 1 Smith KB 304; and see *Briggs v Sowton* (1840) 4 Jur 1014. Cf *Baylis v Lucas* (1779) 1 Cowp 112, where a writ of inquiry was set aside because the jury were returned by the plaintiff's attorney. As to challenge to the array see PARA 826.

2 See PARA 834.

3 *R v Sutton* (1828) 8 B & C 417, where an unqualified alien had served as a juror; *R v Kelly* [1950] 2 KB 164 at 173-174, [1950] 1 All ER 806 at 810-811, CCA, where a juryman was alleged to have been disqualified on grounds of criminal conviction (see PARA 805), distinguishing *Ras Behari Lal v R* (1933) 102 LJPC 144. A new trial was granted where in an action against a local authority a member had served as a juryman: *Atkins v Fulham London Borough Council* (1915) 31 TLR 564, DC. For the position where there has been personation or a mistake of identity see PARA 853.

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## (4) SWEARING AND GIVING IN CHARGE

### 836. Swearing the jury.

On the conclusion of the challenges[1], the full jury in the box or, if there have been no challenges, the jurors called into the box are sworn[2] to try the issues joined between the parties[3]. A juror who objects to being sworn may make a solemn affirmation instead of taking an oath[4].

Once the jurors have been sworn the defendant is formally given into their charge[5]. Until then there is no necessity or right that he should be tried by the jurors already sworn[6].

1 As to challenges see PARAS 825-835.

2 The oath is administered by an officer of the court deputed for that purpose. Each juror must be sworn separately: Juries Act 1974 s 11(3). The form of the oath in criminal trials is: 'I swear by almighty God that I will faithfully try the defendant and give a true verdict according to the evidence': *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.42.4, CA. As to the taking of oaths in general see the Oaths Act 1978; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1021 et seq. In the case of a person who is neither a Christian nor a Jew, the oath must be administered in any lawful manner: s 1(3). As to the swearing of the jury at an inquest see the Coroners Act 1988 s 8(2)(b) (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 s 8(3) (not yet in force); and

**CORONERS** vol 9(2) (2006 Reissue) PARA 993. As to swearing in, taking the oath etc in Welsh, and as to the use of Welsh in legal proceedings, see **CIVIL PROCEDURE** vol 12 (2009) PARAS 1118, 1132.

3 After the jurors have been sworn, the cards with their names are kept apart until they have given a verdict or been discharged. From the names left in the box or remaining on the panel further juries are called in the same way if occasion requires. As to the provisions on the summoning, empanelling and selecting of jurors see PARA 812 et seq.

4 See the Oaths Act 1978 s 5(1), (4). In cases where it is not practicable without inconvenience or delay to administer an oath in the manner appropriate to a person's religious beliefs, he may (or may be required to) make an affirmation under s 5: see s 5(2), (3). The following words are used for the affirmation: 'I do solemnly, sincerely and truly declare and affirm that I will faithfully try the defendant and give a true verdict according to the evidence': *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.42.4, CA. As to the making of affirmations in general see the Oaths Act 1978 ss 5(1), 6(1); and **CIVIL PROCEDURE** vol 11 (2009) PARA 1023.

5 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1298.

6 See *Mansell v R* (1857) 8 E & B 54 at 79, Ex Ch (on a trial for murder a juror who, after being sworn but before the defendant had been given in charge, stated that he had conscientious scruples against capital punishment, was discharged).



## (5) CONDUCT DURING THE HEARING

### 837. Death or discharge of a juror in a criminal trial.

If, in the course of a criminal trial of any person for an offence on indictment, any member of the jury dies or is discharged by the court[1] whether as being through illness incapable of continuing to act or for any other reason[2], the jury is nevertheless to be considered as remaining for all the purposes of that trial properly constituted so long as the number of its members is not less than nine, and the trial proceeds and a verdict may be given accordingly[3].

Notwithstanding these provisions, on the death or discharge of a member of the jury in the course of a trial of any person for an offence on indictment the court may discharge the jury in any case where the court sees fit to do so[4].

1 As to the meaning of 'court' see PARA 804 note 1. As to discharge of a jury during trial see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1328-1330.

2 Ie including misconduct or bias. As to misconduct see PARA 841; and see also **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1329. As to bias see PARA 842.

3 Juries Act 1974 s 16(1). Section 16(1) does not expressly confer upon a judge power to discharge a juror; it provides that, if a juror is discharged, the jury is considered as remaining for all purposes of the trial: *R v Hambery* [1977] QB 924, 65 Cr App Rep 233, CA. No formality is required for the purposes of the discharge of a juror: *R v Browne* [1962] 2 All ER 621, [1962] 1 WLR 759, CCA. The discharge need not take place in open court but normally will do so: see *R v Richardson* [1979] 3 All ER 247, [1979] 1 WLR 1316, CA. Where a juror is discharged not through illness or bereavement, the trial judge is not required to consult counsel: *R v Richardson* [1979] 3 All ER 247, [1979] 1 WLR 1316, CA. The Juries Act 1974 provides that, in the case of a trial for any offence punishable with death, written assent to the application of s 16(1) must be given by the prosecution and the defendant: see s 16(2) (amended by the Criminal Justice Act 1988 Sch 16); and see also *R v Browne* [1962] 2 All ER 621, [1962] 1 WLR 759, CCA (where counsel signs a certificate on behalf of the defendant, the court is entitled to presume that the defendant has consented, and a defendant who, realising what is occurring, does not object at the time cannot subsequently maintain objection). Note that the sentence of death can no longer be imposed.

4 Juries Act 1974 s 16(3).

**UPDATE**

**837 Death or discharge of a juror in a criminal trial**

NOTE 3--Where member of jury has been discharged, at whatever stage, judge does not need to give further direction as it would be productive of confusion: *R v Carter* [2010] All ER (D) 43 (Feb).

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(5) CONDUCT DURING THE HEARING/838. Adjournment and separation of jury.

## 838. Adjournment and separation of jury.

The court has power to adjourn a hearing, and the jury may be permitted to separate during such an adjournment[1].

In criminal cases jurors are permitted to separate prior to considering their verdict. Previously no separation was permitted after the jury retired; however, a trial judge now has a discretion to permit a jury to separate at any time, either before or after retirement[2]. On the first occasion when a jury separates the judge should warn jurors not to talk about the case to anyone outside their number[3]. The Court of Appeal has given guidance on the appropriate directions to be given to a jury permitted to separate after retirement to consider verdict[4].

In civil cases the separation of a jury after the summing-up does not invalidate the verdict, but should be permitted only in rare instances and when special circumstances demand it[5].

After having been sworn, jurors may, at the court's[6] discretion, be allowed reasonable refreshment at their own expense[7].

1 As to adjournment and separation of the jury in a criminal trial see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1327.

2 Juries Act 1974 s 13 (substituted by the Criminal Justice and Public Order Act 1994 s 43(1)).

3 *R v Prime* (1973) 57 Cr App Rep 632, CA.

4 *R v Oliver* [1996] 2 Cr App Rep 514, [1996] 01 LS Gaz R 21, CA.

5 *Fanshaw v Knowles* [1916] 2 KB 538, CA. It is misconduct if the jury separate without leave of the court: see PARA 841.

6 As to the meaning of 'court' see PARA 804 note 1.

7 Juries Act 1974 s 15. As to the subsistence allowance payable to jurors see PARA 855. It is misconduct for any juror to eat or drink at the expense of one of the parties before the verdict: see PARA 841.

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## 839. Submissions and evidence in absence of jury.

It is for the judge to decide whether or not a submission made during a criminal trial is to be heard in the absence of the jury[1], but only in exceptional circumstances may evidence be given in the absence of the jury[2].

1 See *R v Hendry* (1988) 88 Cr App Rep 187, CA; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1324.

2 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1325.

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## 840. Views.

In appropriate cases the judge may permit the jury to view the place in question at any time during the trial[1].

Criminal Procedure Rules and Civil Procedure Rules may make provision as respects views by jurors, and the places which a juror may be called on to go to view cannot be restricted to any particular county or area[2].

1 In the case of a criminal trial see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1326. As to the position in coroners' courts see **CORONERS** vol 9(2) (2006 Reissue) PARA 998.

2 Juries Act 1974 s 14 (amended by the Courts Act 2003 Sch 8 para 173). At the date at which this volume states the law, no rules had been made under the Juries Act 1974 s 14.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(5) CONDUCT DURING THE HEARING/841. Misconduct of jurors.

## 841. Misconduct of jurors.

A jury may be discharged or a new trial ordered if, after being sworn, any juror is guilty of misconduct[1], and, in particular, if the jurors separate without the leave of the court[2], eat or drink before the verdict at the expense of one of the parties[3], hold communication with any person or receive evidence, oral or documentary, out of court[4], determine their verdict by lot[5] or, being unable to agree, have 'split the difference'[6] or if a stranger was with them for a substantial time[7]. Such conduct will be more strictly scrutinised when it occurs after the summing-up and during the consideration of the verdict[8].

Misconduct or impropriety by a juror may be sufficient to result in that juror or the entire jury being discharged[9]. The factual situations that arise are many, and include drunkenness[10], alleged racism[11], improper pressure on other jurors[12], consulting an ouija board in the course of deliberations[13], declining to take part in the deliberations of the jury[14], making telephone calls after retirement[15], and lunching with a barrister not concerned with the proceedings[16].

The Court of Appeal has jurisdiction to hear an appeal against the discharge of a jury in a civil case[17] but not in a criminal case[18]. A decision to discharge a juror is an important step, and a capricious decision to discharge a juror may result in a conviction being overturned in a criminal case[19].

In a criminal case any communication between the jury after its retirement and the judge must be read out in open court[20], provided it relates to a matter in dispute which may result in conviction or acquittal[21]; if he considers it useful, the judge should seek the assistance of counsel[22]. Where it relates to a matter which cannot affect the merits of the case, the question whether to read the communication out in court is one for the discretion of the judge[23].

In a civil case such a communication should be read publicly in court or, if this is undesirable, it should be seen by counsel or, where a litigant is appearing in person, by him personally[24]. The terms of such a communication should be put on the record[25].

Generally no investigation into a jury's deliberations is permitted after the verdict is entered[26].

1 See **CIVIL PROCEDURE** vol 12 (2009) PARA 1714; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1329.

Trial judges should ensure that the jury is alerted to the need to bring any concerns about the behaviour of fellow jurors or of others affecting the jurors at the time and not to wait until the case is concluded: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.42.6, CA; *Practice Direction (Crown Court: Guidance to Jurors)* [2004] 1 WLR 665, [2004] 2 Cr App Rep 3 at IV.42.6, CA. If there is an indication of an irregularity caused by extraneous influences (eg contact with other persons who may have passed on information which should not have been before the jury) which raises a reasonable suspicion, the judge must investigate the matter: see *R v Blackwell, R v Farley, R v Adams* [1995] 2 Cr App Rep 625, CA; *R v Oke* [1997] Crim LR 898, CA.

Where it is apparent that there is friction between members of a jury, so that the inference could be drawn that certain members of the jury might not be able to perform their duty, the whole jury should be questioned in open court as to their capacity, as a body, to continue: *R v Orgles* [1993] 4 All ER 533, 98 Cr App Rep 185, CA. Circumstances that give rise to such a situation would be internal to the jury and are to be distinguished from external circumstances that might make it appropriate to question an individual juror: *R v Orgles*. The Contempt of Court Act 1981 s 8(1) (see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 451) does not preclude the judge from conducting an investigation into matters such as bias or irregularity in the jury room (*R v Connor, R v Mirza* [2004] UKHL 2, [2004] 1 AC 1118, [2004] 1 All ER 925), but as a general rule it is contrary to common law for the judge to ask the jury questions, or receive evidence, about anything said in the course of the jury's deliberations while it is considering its verdict (*R v Smith, R v Mercieca* [2005] UKHL 12, [2005] 2 All ER 29, [2005] 1 WLR 704). An exception to this rule may exist if an allegation is made which tends to show that the jury as a whole declined to deliberate at all, but decided the case by other means such as drawing lots or tossing a coin. Such conduct would be a negation of the function of a jury and a trial whose result was determined in such a manner would not be a trial at all: see *R v Connor, R v Mirza* at [123] per Lord Hope of Craighead. Where an investigation is impermissible, the judge has the choice of either discharging the jury or giving it a further direction. However, it is incumbent on the judge to ensure that the further direction is apposite, clear, and as emphatic as the situation requires: *R v Smith, R v Mercieca*.

2 *Hughes v Budd* (1840) 8 Dowl 315 (where a juror left the court during a hearing, returning with cigars, and he had been seen talking to the plaintiff's attorney in an adjoining public house); *R v Ward* (1867) 17 LT 220, CCR (where a juror left the court-house without leave after being sworn); *R v Ketteridge* [1915] 1 KB 467, CCA (where a conviction was quashed because, on the jury retiring, one of them left the precincts of the court for a quarter of an hour before joining the jury in its retiring room); *R v Alexander* [1974] 1 All ER 539, [1974] 1 WLR 422, CA (where a juror returned to the courtroom to collect an exhibit; no application was made for discharge of the jury and the conviction was upheld); *R v Goodson* [1975] 1 All ER 760, [1975] 1 WLR 549, CA (where a conviction was quashed as a juror had left the jury room to make a telephone call after the jury had retired). See also *R v Chandler* [1993] Crim LR 394, CA (the separation of one juror after retirement without permission was an irregularity but, on the particular facts, the integrity of the process of deliberation by the jury was not threatened). Jurors may now separate after retirement with the leave of the court (see PARA 838) and the authorities should be read in the light of the fact that the long-standing rule against separation after retirement has been relaxed. As to the meaning of 'court' see PARA 804 note 1.

3 Jurors are now at the court's discretion allowed reasonable refreshment at their own expense (see PARA 838).

4 Co Litt 227b; 2 Roll Abr 686; *R v Willmont* (1914) 78 JP 352, CCA (where the conviction was quashed because the clerk of assize had entered the jury's retiring room and answered questions put to him by them and a discussion took place); *Goby v Wetherill* [1915] 2 KB 674 (where the verdict was invalidated by a stranger's presence in the jury room for a substantial time); *R v Shepherd* (1910) 74 JP Jo 605 (where the jury was discharged because a woman had spoken to a juror during the adjournment); *R v Twiss* [1918] 2 KB 853, CCA; *R v Brandon* (1969) 53 Cr App Rep 466, CA (where the conviction was quashed because of prejudicial remarks of a jury bailiff when escorting jurors to the lavatory); *R v McNeil* [1967] Crim LR 540, CA ( jury bailiffs

retired with jury; conviction quashed); *R v Panayis* [1999] Crim LR 84, CA (juror had conversation with defendant's solicitor's clerk; co-defendant absconded; juror not discharged and conviction upheld); *R v Karakaya* [2005] 2 Cr App Rep 77, CA; *R v Thakrar* [2008] EWCA Crim 2359, [2009] Crim LR 357; *R v Marshall* [2007] EWCA Crim 35, [2007] All ER (D) 76 (Jan); *R v Hawkins* [2005] EWCA Crim 2842 (in each of these last four cases, jurors downloaded material from the internet; appeals allowed in first two cases because of risk that jury would have been influenced adversely to defendant by material downloaded; appeals not allowed in latter two cases because no such risk). See also *R v Thorpe, R v Nicholls, R v Burke, R v Boyd* [1996] 1 Cr App Rep 269, CA (where jurors rejected improper attempts to influence them and reported incidents promptly to judge, assuring him their deliberations would not thereby be influenced, no real risk of injustice; judge entitled to refuse to discharge jury).

5 *Hale v Cove* (1735) 1 Stra 642; *Harvey v Hewitt* (1840) 8 Dowl 598. Where the court was satisfied with the verdict, albeit arrived at by lot, a new trial was not ordered: *Prior v Powers* (1664) 1 Keb 811. See the Contempt of Court Act 1981 s 8; and note 1.

6 *Hall v Poyser* (1845) 13 M & W 600. See the Contempt of Court Act 1981 s 8; and note 1.

7 *Goby v Wetherill* [1915] 2 KB 674; *R v McNeil* [1967] Crim LR 540, CA.

8 A distinction has been drawn between the conduct of jurors when at the bar and when they have left it: 1 Chitty's Criminal Law (2nd Edn) 527. The court will have regard to all the circumstances before it puts the parties to the expense of a new trial: *R v Kinnear* (1819) 2 B & Ald 462; *Morris v Vivian* (1842) 10 M & W 137; *Sabey v Stephens* (1862) 7 LT 274, where the court refused to disturb a verdict when, the day after it was given, the foreman wrote to the successful party on behalf of himself and his fellow jurors asking for a remittance. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1329. For the power of the Court of Appeal to award a venire de novo see PARA 834.

As to the effect of discharge of the jury during the trial see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1329.

9 Whether an individual juror or the entire jury is discharged is in the discretion of the judge: *R v Hambery* [1977] QB 924, [1977] 3 All ER 561, CA. The Court of Appeal will not lightly review and overturn the decision of a judge to discharge or retain a juror: *R v Hambery*.

10 *R v Knott* (1992) Times, 6 February, CA (where a juror became drunk, it was not necessary to discharge the whole jury; the proper course would be to ask the individual juror to stand down).

11 Application 22299/93 *Gregory v United Kingdom* (1997) 25 EHRR 577, ECtHR.

12 *R v Lucas* [1991] Crim LR 844, CA.

13 *R v Young (Stephen)* [1995] QB 324, [1995] 2 Cr App Rep 379, CA (conviction quashed).

14 *R v Schot, R v Barclay* [1997] 2 Cr App Rep 383, [1997] Crim LR 827, CA (judge ought not to have discharged entire jury).

15 *R v McCluskey* [1993] Crim LR 976, CA (no material irregularity as juror had made only one call on his mobile phone, the call being related to his business).

16 *R v Devall* (1992) 13 Cr App Rep (S) 598, [1992] Crim LR 664, CA (in declining to discharge the entire jury, the judge had been wrongly influenced by the fact that the proceedings in question were a retrial; appeal allowed and retrial ordered).

17 Ie under the Senior Courts Act 1981 s 16(1) (see **COURTS** vol 10 (Reissue) PARA 639): *Gladding v Channel 4 Television Corpn* [1999] EMLR 475, CA. The Senior Courts Act 1981 was previously known as the Supreme Court Act 1981 and was renamed by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 as from 1 October 2009: see the Constitutional Reform Act 2005 (Commencement No 11) Order 2009, SI 2009/1604; and **COURTS**.

18 *Winsor v R* (1866) LR 1 QB 390; *R v Lewis* [1908-10] All ER Rep 654, CCA.

19 See *R v Hambery* [1977] QB 924, [1977] 3 All ER 561, CA.

20 *R v Green* [1950] 1 All ER 38, CCA; *R v Gorman* [1987] 2 All ER 435, [1987] 1 WLR 545, CA ( judge should state in open court the nature and content of the communication and, if he thinks it helpful, seek the assistance of counsel, before the jury returns to court); *R v Green* [1992] Crim LR 292, CA; cf *R v Furlong* [1950] 1 All ER 636, CCA (where a communication was read out in court after discharge of the jury, and the conviction was upheld). See also *R v Dempsey* (1991) Times, 9 January, CA (communication between judge and jury prior to retirement of the jury). See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1333.

21 *R v Ion* (1950) 34 Cr App Rep 152, CCA; *R v Gorman* [1987] 2 All ER 435, [1987] 1 WLR 545, CA.

22 *R v Gorman* [1987] 2 All ER 435, [1987] 1 WLR 545, CA.

23 *R v Ion* (1950) 34 Cr App Rep 152, CCA; *R v Gorman* [1987] 2 All ER 435, [1987] 1 WLR 545, CA (the communication can be dealt with without any reference to counsel and without bringing the jury back into court).

24 *Fromhold v Fromhold* [1952] 1 TLR 1522, CA. As to communications made during the course of the trial see PARA 843.

25 *Naismith v London Film Productions Ltd* [1939] 1 All ER 794 at 798, CA.

26 See *R v Qureshi* [2001] EWCA Crim 1807, [2002] 1 WLR 518. As to the likelihood of injustice being caused by misconduct in jury deliberations, and as to the confidentiality of such deliberations, see *A-G v Scotcher* [2005] UKHL 36, [2005] 3 All ER 1, [2005] 1 WLR 1867 (where an application for contempt of court under the Contempt of Court Act 1981 s 8(1) (see PARA 858; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 451) was allowed against a juror who had anonymously written to the mother of the defendant saying that there had been a miscarriage of justice and revealing details of what had occurred when the jury retired); and see also *A-G v Seckerson* [2009] EWHC 1023 (Admin), [2009] EMLR 371, [2009] All ER (D) 106 (May).

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## 842. Bias.

Actual or apparent bias in a juror gives grounds for discharge[1]. The appearance of bias is equally important as actual bias. Where actual bias is not established, the test the court should apply is whether, having regard to the relevant circumstances, as ascertained by the court, a fair-minded and informed observer would conclude that there was a real danger that a juror was or would be biased in the sense that he might unfairly regard with favour or disfavour the case of a party to the issue under consideration by him[2]. An affirmative answer to that question will necessitate the discharge of that juror and, depending on the facts of the case, the entire jury[3]. Bias may encompass deliberate hostility[4], inadvertent knowledge of the defendant's bad character[5], alleged racism[6], acquaintance with prosecution witnesses[7] or a close nexus with the case in some way[8].

1 As to bias providing a ground for challenge for cause see PARA 831.

2 *R v Gough* [1993] AC 646, [1993] 2 All ER 724, HL, as adjusted by the decision in *Re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700, CA, so as to make the test in *R v Gough* compatible with the case law of the European Court of Human Rights. The correctness of the principle in *Re Medicaments and Related Classes of Goods (No 2)* was confirmed in *Porter v Magill, Weeks v Magill* [2001] UKHL 67, [2002] 2 AC 357, [2002] 1 All ER 465; applied in *Mitcham v R* [2009] UKPC 7, [2009] All ER (D) 145 (Apr). See also *R v Hawkins* [2005] EWCA Crim 2842 (there was no apparent bias where jurors notified judge of internet research by one their number and sought further direction); *R v Azam* [2006] EWCA Crim 161, [2006] Crim LR 776, (2006) Times, 16 March; *R v S* [2009] EWCA Crim 104, [2009] All ER (D) 75 (Jan). Where a dispute on evidence arises between a defendant and a witness who is employed in the administration of justice, such as a police officer or a solicitor employed by the Crown Prosecution Service, a fair minded and informed observer could conclude that, where one of the jurors is a colleague of the witness who is employed in the administration of justice, there is a real possibility that such a juror could be biased: *R v Abdroikov, R v Green, R v Williamson* [2007] UKHL 37, [2008] 1 All ER 315, [2007] 1 Cr App Rep 280; applied in *R v Khan* [2008] EWCA Crim 531, [2008] 3 All ER 502 (Crown Prosecution Service lawyer ought not to be a juror where Crown Prosecution Service is prosecuting authority; police officers are not by reason of their occupation to be considered to be biased in favour of prosecution); *R v C* [2008] EWCA Crim 1033, [2008] All ER (D) 370 (Apr) (fact that a juror is a police officer does not by itself create an appearance of bias, but one situation in which such an appearance may arise is where a police officer juror shares a connection (eg by service) with a police officer witness whose evidence is going to be disputed); *R v Yemoh* [2009] EWCA Crim 930, [2009] All ER (D) 07 (Jun) (defendant's abusive statement about police should not have led to discharge of juror who was a police officer); *R v T* [2009] EWCA Crim 1638, [2009] All ER (D) 327 (Jul) (it could not be assumed that a juror who was a police officer was biased

where the defendant alleged police misconduct). See further *R v Thakrar* [2008] EWCA Crim 2359, [2009] Crim LR 357 (there was a real possibility of bias where one of the jurors had researched the defendants on the internet and disclosed a previous conviction to the other jurors); and see also *R v Cornwall* [2009] EWCA Crim 2458, [2009] All ER (D) 290 (Nov) (foreman of jury discovered to be newspaper columnist; defendant contended that juror was an outspoken polemicist who held strong and well-published views on crime, law and order; held that the juror had not demonstrated actual bias nor did his articles give rise to the possibility or risk of bias). Where a matter that could prejudice the jurors was mentioned before them and subsequently not referred to, it was for the judge to determine whether to discharge the jury or not: *Mitcham v R* [2009] UKPC 7, [2009] All ER (D) 145 (Apr).

3 See PARA 841. In *R v Appiah* [1998] Crim LR 134, CA, a juror who felt threatened by the sight of the defendant out of court was discharged and the trial continued with the remaining jurors not thereby prejudiced.

4 *R v O'Coigly* (1798) 26 State Tr 1191. Contrast *R v Wright* [1995] 2 Cr App Rep 134, [1995] Crim LR 251, CA (Court of Appeal upheld trial judge's refusal to discharge a juror who was said to show signs of hostility to a defendant during the defendant's cross-examination).

5 *R v Box* [1964] 1 QB 430, [1963] 3 All ER 240, CCA. See also *R v Lambert* [2006] EWCA Crim 827, [2006] 2 Cr App Rep (S) 699; *R v Lawson* [2005] EWCA Crim 84, [2007] 1 Cr App Rep 277; *R v Russell* [2006] EWCA Crim 470, [2006] All ER (D) 151 (Mar).

6 See Application 22299/93 *Gregory v United Kingdom* (1997) 25 EHRR 577, ECtHR.

7 *R v K (Jury: Appearance of Bias)* (1995) 16 Cr App Rep (S) 966, CA. See also *R v I* [2007] EWCA Crim 2999, [2007] All ER (D) 398 (Oct) (potential juror was police officer familiar with prosecution witnesses); *R v I* [2007] EWCA Crim 2999, [2007] All ER (D) 398 (Oct) (judge erred in not discharging the jury when a juror informed him that he thought he had worked with the defendant); *R v Hambleton* [2009] EWCA Crim 13, [2009] All ER (D) 67 (Jan) (juror who had stood down who knew the defendant informed another juror that the defendant was 'a bad lot'); *R v Ali* [2009] EWCA Crim 1763, [2009] All ER (D) 214 (Jul) (challenge to presence of police officer as member of jury); *R v Pintori* [2007] EWCA Crim 1700, [2007] Crim LR 997.

8 See *R v Wilson* [1995] Crim LR 952, CA (retrial ordered after a challenge in respect of a juror married to a prison officer serving a prison where the appellants were on remand was refused).

**UPDATE**

**842 Bias**

NOTE 2--See *A-G of the Cayman Islands v Tibbetts* [2010] UKPC 8, [2010] All ER (D) 127 (Apr) (close friendship between witness and juror but no apparent bias because witness's evidence unchallenged).

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## 843. Expression of opinion before verdict.

The mere expression of an opinion by a jury at an early stage of a case is not in itself such misconduct as would justify any person in refusing to submit his case to that tribunal, but if the members of the jury do not honestly and judicially approach the question before them, a new trial may be ordered[1].

1 *Campbell v Hackney Furnishing Co Ltd* (1906) 22 TLR 318. Alternatively, the judge may himself discharge the jury and begin the trial afresh: *R v Kirke* (1909) 43 ILT 130. There must be some positive and irregular expression of opinion: *Ramadge v Ryan* (1832) 9 Bing 333; *Allum v Boultbee* (1854) 9 Exch 738; and see *Ural Caspian Oil Corpn Ltd v Hume-Schweder* (1913) Times, 31 July, HL. On this principle the court will order a new trial if the sum awarded for damages has evidently resulted from compromise: *Hall v Poyser* (1845) 13 M & W 600; *Kelly v Sherlock* (1866) LR 1 QB 686 at 693; *Burrows v London General Omnibus Co* (1894) 10 TLR 298, CA.

Notes indicating the extent of division between jurors are never disclosed; such a disclosure is said to be contrary to public policy and in breach of the confidentiality rule in the Contempt of Court Act 1981 (see PARA 858; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARa 451). See also *A-G v Scotcher* [2005] UKHL 36, [2005] 3 All ER 1, [2005] 1 WLR 1867; and PARA 841 note 26.

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## 844. Premature verdict.

In a civil trial where a jury, before hearing all the evidence of one party, finds a verdict for the other[1], or misleads counsel by an intimation that it does not wish to hear more evidence for his client and then finds a verdict for the other party[2], it is within the trial judge's discretion to decide whether he should discharge the jury and order a new trial or continue with the same jury[3]. In the second case he must direct the jury to hear the whole of the party's case against whom it proposes to find, and, after it has done so, he must direct it as to the issues[4]. If, in a claim for defamation, the claimant has failed to give evidence during the presentation of his own case but has undertaken, subject to the court's permission being granted, to give evidence in rebuttal of the evidence in support of the defendant's plea of justification, the jury, if it desires to give its verdict before the conclusion of the evidence on the defendant's behalf, must be directed to either ignore the evidence given on behalf of the defendant or wait until a ruling as to the claimant's right to give evidence in rebuttal has been obtained[5]. Any question of a jury stopping a case is a matter between the judge and the jury and not a matter which should be introduced to the jury by counsel on his own initiative[6].

In a criminal case the jury may acquit the defendant at any time after the close of the prosecution case[7].

1 *De Freville v Dill* (1927) 43 TLR 431, CA; *Hobbs v CT Tinling & Co Ltd* [1929] 2 KB 1, CA. Cf *Beevis v Dawson* [1956] 2 QB 165 at 173, [1956] 2 All ER 371 at 373 (revsd on appeal [1957] 1 QB 195 at 202, [1956] 3 All ER 837 at 840, CA), where the defendant was not entitled to object on the ground that the jury had found a verdict for the plaintiff before evidence on behalf of the defendant was concluded, since the defendant's counsel had invited it to do this, but a new trial was ordered on other grounds: see the text and note 5.

2 *Biggs v Evans* (1912) 106 LT 796, DC.

3 *De Freville v Dill* (1927) 43 TLR 431, CA; and see also *Biggs v Evans* (1912) 106 LT 796, DC; *Hobbs v CT Tinling & Co Ltd* [1929] 2 KB 1 at 24, CA; *Beevis v Dawson* [1956] 2 QB 165 at 178-179, [1956] 2 All ER 371 at 376-377 (revsd on appeal [1957] 1 QB 195, [1956] 3 All ER 837, CA).

4 *Hobbs v CT Tinling & Co Ltd* [1929] 2 KB 1 at 26, 33, 46, CA.

5 *Beevis v Dawson* [1957] 1 QB 195 at 218, [1956] 3 All ER 837 at 850, CA, per Parker LJ, where the defendant's counsel had, before the evidence for the defence was concluded, invited the jury to return a verdict for the plaintiff with contemptuous damages; the verdict was set aside and a new trial ordered in view of: (1) the absence of any ruling as to the plaintiff's right to give evidence in rebuttal; (2) misstatements as to the burden of proof of justification; and (3) the invitation to the jury to stop the case and the absence of any direction as to the possibility of evidence being given in rebuttal.

6 *Beevis v Dawson* [1957] 1 QB 195 at 208, 214, [1956] 3 All ER 837 at 844, 848, CA. As to counsel's duties see generally **LEGAL PROFESSIONS**.

7 See *R v Kemp* [1995] 1 Cr App Rep 151, CA; *R v Collins* [2007] EWCA Crim 854, [2007] All ER (D) 161 (Apr); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1313.

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## 845. Discharge before verdict.

On the trial of any issue[1], civil or criminal, a juror may be withdrawn by consent of the parties[2], and the court may in its absolute discretion discharge the jury at any time before the verdict is given[3]. However, a jury ought not to be discharged at the instance of the prosecution for the purpose of enabling the prosecution to put forward a stronger case[4].

1 If there are several distinct issues to be tried in one claim, the judge may, even without consent, accept the verdict on any issue on which the jury can agree, and discharge it upon the others, leaving the parties to take the undecided issues down to a new trial: *Marsh v Isaacs* (1876) 45 LJQB 505. He may also discharge the jury on any issue which he deems immaterial: *R v Johnson* (1839) Macl & Rob 1, HL; *Powell v Sonnett* (1827) 1 Bli NS 545.

2 *R v Kinloch* (1746) Fost 16 at 22, 27. When a jury has been discharged it will be assumed that the discharge was by consent unless it appears to the contrary on the record: *Scott v Bennett* (1871) LR 5 HL 234. A civil claim does not thereby come to an end, and on breach of the terms on which the juror has been withdrawn the court may proceed to the trial thereof with the same or a fresh jury: *Norburn v Hilliam* (1870) LR 5 CP 129; *Thomas v Exeter Flying Post Co* (1887) 18 QBD 822.

3 As to the power to discharge a jury in a criminal trial see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1328; as to the reasons for discharge during a criminal trial see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1329; and as to the effect of discharge during trial see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1330. As to discharge in civil cases see *Morris v Davies* (1828) 3 C & P 427. As to the death or discharge of an individual juror see PARA 837. The court generally discharges the jury when satisfied that the jurors will not agree on a verdict: see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1346. The discharge of a jury unable to agree was the subject of further consideration in *Winsor v R* (1866) LR 1 QB 289 at 309 (affd on appeal LR 1 QB 390, Ex Ch), where it was laid down that the judge's discretion in ordering the discharge was not open to review. It seems that the defendant need not be present when the jury is discharged: *R v Richardson* [1913] 1 KB 395, CCA. As to the discharge of a jury in a libel trial see *Gladding v Channel 4 Television Corpn Ltd* [1999] EMLR 475, CA.

4 See *R v Charlesworth* (1861) 1 B & S 460.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(5) CONDUCT DURING THE HEARING/846. Juror's own knowledge of facts.

## 846. Juror's own knowledge of facts.

A juror's personal knowledge of the case or the defendant may be sufficient to found a challenge or render a conviction unsafe[1]. A jury may act upon its general knowledge and look at documents[2] of a public character, although they are not exhibits in the proceedings, when they are sent to it by or with the approval of the court[3], and in proper cases may have a view of the place in question[4].

1 See *R v Hood* [1968] 2 All ER 56, [1968] 1 WLR 773, CCA (juror was known to defendant's wife). As to unsafe convictions generally see the Criminal Appeal Act 1995; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1878.

2 As to the functions of judge and jury with respect to the interpretation of documents see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 167.

3 *Vicary v Farthing* (1595) Cro Eliz 411; *Graves v Short* (1598) Cro Eliz 616; *Cole v De Trafford (No 2)* [1918] 2 KB 523, CA.

4 As to views see PARA 840; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1108; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1326. It is undesirable for the jury to take newspaper reports of the proceedings into the jury room: *Salter v Beaverbrook Newspapers Ltd* (1964) 108 Sol Jo 941.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(6) GIVING OF VERDICT AND DISCHARGE/847. Types of verdict.

## (6) GIVING OF VERDICT AND DISCHARGE

### 847. Types of verdict.

Juries in both civil and criminal matters may find general or special verdicts[1]. General verdicts in criminal matters are findings of guilty or not guilty[2], and in civil causes are statements as to the party for which the juries find, with the amount of damages assessed, if such finding is for the claimant, or the sum awarded if the issue is one of assessment solely[3]. Special verdicts are findings of specific facts[4] on which, in criminal cases, the court must direct the jury to return the general verdict warranted by its special findings[5]. Special verdicts in criminal cases should be found only in the most exceptional circumstances[6].

1 As to the form of verdict in coroners' courts see **CORONERS** vol 9(2) (2006 Reissue) PARA 1030. As from a day to be appointed, a jury at an inquest will no longer return a verdict but will instead make a determination or finding: see the Coroners and Justice Act 2009 s 10 (not yet in force); and **CORONERS**. At the date at which this volume states the law, no such day had been appointed.

2 As to permissible verdicts see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1334.

3 Where there is more than one issue (eg (1) libel; (2) slander), the jury must apportion the damages, otherwise there is in effect no verdict: *Weber v Birkett* [1925] 2 KB 152, CA. As to a review of damages on appeal see **DAMAGES** vol 12(1) (Reissue) PARA 1162.

4 A special verdict must not consist of a mere statement of evidence: *Hubbard v Johnstone* (1810) 3 Taunt 177 at 209, Ex Ch; *Fryer v Roe* (1852) 12 CB 437. It must contain express findings of fact on which, and on which alone, judgment can be founded: *Tancred v Christy* (1843) 12 M & W 316. The whole findings must appear upon the record: *R v Aire and Calder Navigation (Undertakers)* (1778) 2 Term Rep 660 at 666. The jury may not attach a condition to its verdict: *Fanshaw v Knowles* [1916] 2 KB 538, CA. For an example of a special verdict given in pursuance of a nineteenth century local Act see *Harris Simon & Co Ltd v Manchester City Council* [1975] 1 All ER 412, [1975] 1 WLR 100, DC.

5 See *R v Dudley and Stephens* (1884) 14 QBD 273 at 280 per Lord Coleridge CJ. In *R v Jameson* [1896] 2 QB 425, Lord Russell of Killowen CJ put a series of questions in writing to the jury, which it answered, and then directed that the answers amounted to a verdict of guilty, whereupon the jury returned a general verdict of guilty. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1339. Note that, by way of exception, it is the jury which returns the special verdict of not guilty by reason of insanity; and, in an insanity case, a general verdict is not returned: see the Trial of Lunatics Act 1883 s 2; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31; **MENTAL HEALTH** vol 30(2) (Reissue) PARA 499.

6 *R v Bourne* (1952) 36 Cr App Rep 125, CCA.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(6) GIVING OF VERDICT AND DISCHARGE/848. Special verdict a privilege.

### 848. Special verdict a privilege.

The finding of a special verdict is a privilege and not an obligation of a jury[1], and if it refuses to find one, or to accept the direction of the judge as to what the general verdict founded on it should be, it seems that the general verdict as delivered must stand[2].

1 *Devizes Corpn v Clark* (1835) 3 Ad & El 506; *R v Allday* (1837) 8 C & P 136.

2 If the jury returns a verdict of not guilty in spite of the judge's direction upon matters specially found by it, a defendant must be discharged: *R v Allday* (1837) 8 C & P 136; *R v Jameson* (1896) 12 TLR 551 at 593-594.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(6) GIVING OF VERDICT AND DISCHARGE/849. Where and how verdicts are given.

## 849. Where and how verdicts are given.

A jury's verdict on the issue must be given in open court[1] in the presence of all the jurors[2], and preferably in the presence of the defendant[3]. If a jury gives a reason or adds to a direct verdict uncertain or contradictory matter, it is mere surplusage[4].

A judge will decline to hear the reasons upon which a jury has based its verdict and it must not be asked for them[5]. Where a jury has given a general verdict the judge is not entitled to ask the jury any further question for the purpose of ascertaining whether the ground of its verdict was one which there was evidence to support[6].

However, in cases of unlawful killing, where there is more than one possible ground for a verdict of guilty of manslaughter, one of which is diminished responsibility, the judge may invite the jury to give the ground for its verdict or to say whether it was based on both grounds[7]. However, the jury is under no obligation to respond to the invitation[8].

The verdict is forthwith entered on the record by the officer of the court. The jury is then discharged[9].

1 *Ellis v Deheer* [1922] 2 KB 113, CA. It is the judge's duty to stay to assist the jury so long as it is deliberating on its verdict: *Fanshaw v Knowles* [1916] 2 KB 538, CA; *Banbury v Bank of Montreal* [1917] 1 KB 409 at 442, CA, per Scrutton LJ; *Hawksley v Fewtrell* [1954] 1 QB 228 at 237, 242, 246, [1953] 2 All ER 1486 at 1490, 1494, 1496, CA. A verdict in a civil case given in court to the associate in the absence of the judge is a public verdict and although it is undesirable that a verdict should be given in the judge's absence, his absence does not of itself render it a nullity, even though the jury may have been discharged after giving the verdict and not called upon to appear again to return a verdict before the judge: *Hawksley v Fewtrell*. It is a question upon which the court will exercise its discretion as to granting a new trial, whether the associate (in the absence of the judge) rightly interpreted the meaning of the jury when he entered the verdict: *Doe d Lewis v Baster* (1836) 5 Ad & El 129; *Bentley v Fleming* (1845) 1 CB 479. An affidavit by a juror as to what took place in court upon the entering of the verdict will not be excluded by the rule excluding evidence of jurors as to the jury's deliberations (see PARA 852): *Roberts v Hughes* (1841) 7 M & W 399. It is the duty of the parties' solicitors to be in court to hear the verdict: *Dauntley v Hyde* (1841) 6 Jur 133. As to delivery of the verdict see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1341.

2 This is in order that they may all hear if it is rightly delivered by the foreman, for if it is delivered in the presence of them all their assent will be presumed: *Raphael v Governor & Co of the Bank of England* (1855) 17 CB 161, where the court refused to admit an affidavit by jurors, who had heard what the foreman said and had not objected, to the effect that they had not understood his answers. Where three jurors were out of court and did not assent to what the foreman said a new trial was ordered: *R v Wooller* (1817) 2 Stark 111. Where three jurors could not hear what the foreman said, affidavits by them to show that the verdict was not unanimous were held admissible, even though objection was not raised until after the discharge of the jury, and a new trial was ordered: *Ellis v Deheer* [1922] 2 KB 113, CA. See contra *Nanan v The State* [1986] AC 860, [1986] 3 All ER 248, PC, in which juror affidavits challenging apparent unanimity were held to be inadmissible.

3 The giving of the verdict in the presence of the defendant is not necessary but usual (*R v Woodfall* (1770) 5 Burr 2661), except in the case of treason where it is compulsory (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1356).

4 *Eve v Wright* (1627) Cro Car 75; *Plunket v Lord Kingsland* (1749) 7 Bro Parl Cas 404, HL; *Clark v Stevenson* (1772) 2 Wm Bl 803; *Brown v Bristol and Exeter Rly Co* (1861) 4 LT 830; *R v Warner* [1967] 3 All ER 93, [1967] 1 WLR 1209, CA (affd sub nom *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL).

5 Such questions would breach the rule governing the confidentiality of jury deliberations: see the Contempt of Court Act 1981 s 8(1); PARA 858; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 451.

6 *Arnold v Jeffreys* [1914] 1 KB 512; *Horner v Watson* (1834) 6 C & P 680; *Barnes v Hill* [1967] 1 QB 579, [1967] 1 All ER 347, CA. Such a course of action would also amount to a breach of the rule protecting juror confidentiality: see the Contempt of Court Act 1981 s 8(1); PARA 858; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 451.

7 *R v Matheson* [1958] 2 All ER 87, 42 Cr App Rep 145, CCA. Contrast *R v Larkin* [1943] KB 174, 29 Cr App Rep 18, CCA (two possible defences to murder on facts: 'provocation' and 'no intent to injure'; judge should not seek to ascertain basis of manslaughter decision); *R v Byrne (Paul)* [2002] EWCA Crim 1975, [2003] 1 Cr App Rep (S) 338 (defence based on lack of intent; judge left provocation to jury; judge declined to ask jury for basis of manslaughter decision; held judge had discretion so to decline). If the jury is to be asked for the basis of a manslaughter verdict it should be warned to this effect in the summing up: *R v Jones (Douglas)* [1999] All ER (D) 118, (1999) Times, 17 February, CA.

8 *R v Jones (Douglas)* [1999] All ER (D) 118, (1999) Times, 17 February, CA.

9 After discharge, the court will not allow judgment to be entered for a larger sum than was originally declared, even though the jury joins in an affidavit stating that it was its intention to have given a larger sum: *Jackson v Williamson* (1788) 2 Term Rep 281; *Kilmore v Abdoolah* (1858) 27 LJ Ex 307.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(6) GIVING OF VERDICT AND DISCHARGE/850. Majority verdicts.

## 850. Majority verdicts.

The verdict of a jury in proceedings in the Crown Court or the High Court need not be unanimous[1] if: (1) where there are not less than 11 jurors, ten of them agree; or (2) where there are ten jurors, nine of them agree[2]. The verdict of a complete jury of eight in a county court need not be unanimous if seven agree[3]. At an inquest held with a jury, if the minority consists of not more than two persons, a majority verdict (until a day to be appointed) or a majority determination (as from a day to be appointed) may be accepted[4].

No court[5] may accept a majority verdict unless it appears that the jury has had such period of time for deliberation as seems to the court reasonable having regard to the nature and complexity of the case in any event, and the Crown Court may not accept such a verdict unless it appears to the court that the jury has had at least two hours for deliberation[6]. Nor may the Crown Court accept a verdict of guilty by a majority unless the foreman has stated in open court the number who respectively agreed and dissented[7].

These provisions do not affect any practice in civil proceedings by which a court may accept a majority verdict by consent of the parties or by which the parties may agree to proceed with an incomplete jury[8].

A judge may urge a jury to avoid disagreement if it can do so without violating its convictions and may in civil trials point out the inconvenience and expense which would result if a new trial became necessary, but if he were to tell the jury that it was the duty of the minority to give up its independent judgment to that of the majority and to reach agreement even if it had not changed its own convictions, this would amount to a misdirection[9].

1 As to majority verdicts in criminal cases see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1340, 1342.

2 Juries Act 1974 s 17(1)(a), (b). These provisions are subject to s 17(3), (4) (see the text and notes 5-7): s 17(1).

3 Juries Act 1974 s 17(2). This is subject to s 17(4) (see the text and notes 5-6): s 17(2).

4 See the Coroners Act 1988 s 12(2) (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 s 9(2) (not yet in force); and **CORONERS** vol 9(2) (2006 Reissue) PARA 1029. As from a day to be appointed, juries at inquests will no longer return verdicts but will instead make a determination or finding: see ss 9, 10 (not yet in force); and **CORONERS**. At the date at which this volume states the law, no such day had been appointed. A majority determination can only be accepted if the jury has deliberated for a period of time that the senior coroner thinks reasonable in view of the nature and complexity of the case: see s 9(2) (not yet in force); and **CORONERS**.

5 As to the meaning of 'court' see PARA 804 note 1. Note that, in view of this definition, the Juries Act 1974 s 17 does not apply in coroners' courts.

6 Juries Act 1974 s 17(4). In a complicated criminal case much more than two hours should be allowed to elapse before a majority verdict is accepted: *R v Bateson* [1969] 3 All ER 1372, CA. Two hours and ten minutes should elapse from the time when the last juror leaves the jury box until the time when the jury is asked to deliver its verdict: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.46.3, CA. See also *R v Black* [2008] EWCA Crim 344, [2008] All ER (D) 388 (Apr) (until the jury had had at least two hours for deliberation, a majority verdict was prohibited).

7 Juries Act 1974 s 17(3). Compliance with s 17(3) is mandatory; however, all that is necessary is that it is made clear how the jury is divided: *R v Pigg* [1983] 1 All ER 56, [1983] 1 WLR 6, HL (conviction allowed to stand where the foreman of the jury delivering a majority verdict stated only that ten jurors agreed with the verdict). See also PARA 851 note 2.

8 Juries Act 1974 s 17(5).

9 *Re Wright, Lambert v Woodham* [1936] 1 All ER 877 at 879, CA. Slightly different considerations apply in criminal trials, where the trial judge may give the direction set out in *R v Watson* [1988] QB 690, [1988] 1 All ER 897, CA, as follows: 'Each of you has taken an oath to return a true verdict according to the evidence. No one must be false to that oath, but you have a duty not only as individuals but collectively. That is the strength of the jury system. Each of you takes into the jury box with you your individual experience and wisdom. Your task is to pool that experience and wisdom. You do that by giving your views and listening to the views of others. There must necessarily be discussion, argument and give and take within the scope of your oath. That is the way in which agreement is reached. If, unhappily, ten of you cannot reach agreement you should say so'. The direction should be given after a jury has had time to consider a majority direction or as part of the summing up. Trial judges should not depart from the precise wording of the direction: *R v Buono* (1992) 95 Cr App Rep 338, CA. See also *Morrison v Chief Constable of West Midlands Police* [2003] All ER (D) 220 (Feb), CA (simply reminding the jury of the general expense of trials by jury did not automatically constitute misdirection by the judge).



## 851. Jury once discharged.

Once a jury has been discharged after giving a verdict in a civil case upon which judgment has been entered, it cannot usually be recalled to rectify the verdict and there must be a new trial if the court considers that injustice has been done[1]. In a criminal trial, a jury once discharged is functus officio and accordingly any subsequent proceedings involving the jury are a nullity[2].

1 *Loveday's Case* (1608) 8 Co Rep 65b; *Doe d Lewis v Baster* (1836) 5 Ad & El 129. In *Cogan v Ebden* (1757) 1 Burr 383, it was suggested by Lord Mansfield, on a motion for a new trial on the ground that the jury had not returned the verdict it intended, that the record might be amended, and he referred to cases where this had been done. However, it now seems that the only remedy would be a new trial where the jury has left the court before the mistake is discovered. Affidavits of all 12 jurors stating that they had intended their answer to a question to be 'yes' instead of 'no' are not admissible: *Boston v WS Bagshaw & Sons* [1967] 2 All ER 87n, [1966] 1 WLR 1135n, CA; *Diven v Belfast Corpn* [1969] NI 34, CA. However, recent authority suggests that, where the interests of justice in the particular case so require, the judge does have the discretion to set aside a discharge

of a jury and allow the jurors to deliberate further: *Igwemma v Chief Constable of Greater Manchester Police* [2001] EWCA Civ 953, [2002] QB 1012, [2001] 4 All ER 751 (where the very real possibility of a misunderstanding by the jurors of the answer to a question addressed to the judge and the very short time since the original answer were said to be key factors in the exercise of the discretion in favour of further deliberation).

2 *R v Russell* (1984) 148 JP 765, [1984] Crim LR 425, CA. See, however, *R v Aylott* [1996] 2 Cr App Rep 169, [1996] Crim LR 429, CA (jury which had reached a verdict but was then discharged by the trial judge acting under the belief that a verdict could not be reached was reconvened and verdict obtained); *R v Maloney* [1996] 2 Cr App Rep 303, 140 Sol Jo LB 85, CA (a failure to record the number of jurors who agreed and dissented can be rectified if the court reconvenes immediately the error is realised; discharge or dispersal of the jury is not a bar to rectification of the verdict); *R v S* [2005] EWCA Crim 1987, [2006] Crim LR 247, [2005] All ER (D) 394 (Jul) (the conviction was not unsafe where the judge had discharged the jury when counsel intervened and the judge promptly changed his mind and prompt effect was given to it). Cf the correction of a jury's verdict in criminal proceedings: see **CRIMINAL EVIDENCE, LAW AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1334.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/4. PROCEEDINGS BEFORE JURIES/(6) GIVING OF VERDICT AND DISCHARGE/852. Evidence by or about jurors.

## 852. Evidence by or about jurors.

Statements or affidavits by any member of a jury as to its deliberations or intentions on the matter to be adjudicated on are never receivable[1]. The deliberations of juries are confidential[2]. However, the affidavits of jurors or bystanders may be received as to what passed in open court on the bringing in of a verdict[3], the circumstances under which a juror went into the box[4], and his state of sobriety when in the jury box or jury room[5]; and a juror is entitled to be heard in his own defence[6]. Following a verdict, no statement should be taken from a juror without leave of the Court of Appeal[7].

1 *Palmer v Crowle* (1738) Andr 382; *R v Woodfall* (1770) 5 Burr 2661 at 2667; *R v Almon* (1770) 5 Burr 2686; *Vaise v Delaval* (1785) 1 Term Rep 11; *Jackson v Williamson* (1788) 2 Term Rep 281 (as to the amount of damages intended to be awarded); *Owen v Warburton* (1805) 1 Bos & PNR 326; *R v Wooller* (1817) 2 Stark 111; *Coster v Merest* (1822) 3 Brod & Bing 272; *Straker v Graham* (1839) 4 M & W 721 at 724; *Bentley v Fleming* (1845) 1 CB 479; *Raphael v Governor & Co of the Bank of England* (1855) 17 CB 161; *Nesbitt v Parrett* (1902) 18 TLR 510, CA; *R v Willmont* (1914) 78 JP 352, CCA; *R v Armstrong* [1922] 2 KB 555, CCA; *R v Thompson* [1962] 1 All ER 65, CCA; *Boston v WS Bagshaw & Sons* [1967] 2 All ER 87n, [1966] 1 WLR 1135n, CA. A juror cannot later give evidence of lack of unanimity where the verdict was returned in his presence and hearing: *R v Roads* [1967] 2 QB 108, [1967] 2 All ER 84, CA; *R v Connor, R v Mirza* [2004] UKHL 2, [2004] 1 AC 1118, [2004] 1 All ER 925. But see *Ellis v Deheer* [1922] 2 KB 113, CA; and PARA 849. This principle also applies where the statement or affidavit is not that of a juror, but of someone to whom the juror has made a communication: *Aylett v Jewel* (1779) 2 Wm Bl 1299; *Straker v Graham* (1839) 4 M & W 721; *Burgess v Langley* (1843) 5 Man & G 722. In *R v Thomas* [1933] 2 KB 489, CCA, the court refused to admit affidavits from two jurors that they did not understand English well enough to follow the proceedings; but in *Ras Behari Lal v R* (1933) 102 LJPC 144, the court admitted evidence to show that some members of the jury knew little or no English. As to whether a judge is obliged to question members of a jury before deciding to give further direction or to discharge the jury see *R v Smith* [2005] UKHL 12, [2005] 2 All ER 29, [2005] 1 WLR 704. See also *R v Adams* [2007] EWCA Crim 1, [2007] All ER (D) 25 (Jan).

2 It is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings: see the Contempt of Court Act 1981 s 8(1); PARA 858; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 434, 451. See *R v Young (Stephen)* [1995] QB 324, [1995] 2 Cr App Rep 379, CA (jury's overnight stay at a hotel did not come within the meaning of deliberations; accordingly, the court was able to investigate events which had taken place at the hotel). It is not appropriate to conduct an investigation into the deliberations of a criminal jury on the basis that a juror has subsequently alleged that the verdict was not unanimous if the verdict was unambiguous, free from procedural defect and not dissented from when given: *R v Lewis* [2001] EWCA Crim 3048, [2001] All ER (D) 413 (Dec), (2001) Times, 26 April. See also *R v Connor, R v Mirza* [2004] UKHL 2, [2004] 1 AC 1118, [2004] 1 All ER 925 (the principle of the confidentiality of jury deliberations underpins the independence and impartiality of a jury as a whole; the Contempt of Court Act 1981 s 8 is addressed to third parties who can be punished for contempt, and not to the court which has the responsibility of ensuring that the defendant receives a fair trial).

3 *Cogan v Ebden* (1757) 1 Burr 383 (where the jury was asked to give a general verdict when it ought to have been asked to give a separate verdict on each of the two issues in the case); *R v Woodfall* (1770) 5 Burr 2661 at 2667; *R v Almon* (1770) 5 Burr 2686; *Harvey v Hewitt* (1840) 8 Dowl 598; *Roberts v Hughes* (1841) 7 M & W 399. See also PARA 849 note 1.

4 *Bailey v Macaulay* (1849) 13 QB 815 at 829.

5 *Ex p Morris* (1907) 72 JP 5, DC.

6 *Standewick v Hopkins* (1844) 2 Dow & L 502; *Jones v Powell* (1856) 4 WR 252.

7 *R v Mickleburgh* [1995] 1 Cr App Rep 297, CA.

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## 853. Stay or reversal of judgments after verdict.

A judgment after the verdict in a trial by jury in any court[1] cannot be stayed or reversed by reason that: (1) the statutory provisions about the summoning or empanelling of jurors, or the selection of jurors by ballot, have not been complied with[2]; (2) a juror was not qualified in accordance with the statutory provisions[3]; (3) any juror was misnamed or misdescribed[4]; or (4) any juror was unfit to serve[5].

This provision does not preclude an appeal in a criminal case on the ground that the conviction was rendered unsafe in such circumstances[6].

Nor does this provision apply to any objection to a verdict on the ground of personation[7].

1 As to the meaning of 'court' see PARA 804 note 1.

2 Juries Act 1974 s 18(1)(a). This does not apply to any irregularity if objection is taken at, or as soon as practicable after, the time it occurs, and the irregularity is not corrected: s 18(2). See *R v Jalil* [2008] EWCA Crim 2910, [2009] 2 Cr App Rep (S) 276, [2008] All ER (D) 51 (Dec) (a ballot was still valid where the defence objected to two jurors who were balloted and stood by). As to the provisions on the summoning, empanelling and selecting of jurors see PARA 812 et seq. If a juror is unchallenged and is sworn, he cannot afterwards be challenged on the ground of partiality: see PARA 825.

3 Juries Act 1974 s 18(1)(b). As to qualification of jurors see PARA 804. The mere fact of a juror's disqualification does not by itself make a conviction unsafe: *R v Richardson* [2004] EWCA Crim 2997, [2004] All ER (D) 318 (Dec). See also *R v Bliss* [1986] Crim LR 467, CA (verdict of jury should not be stayed or reversed by reason only of disqualified juror being part of it); *R v Raviraj* (1986) 85 Cr App Rep 93, CA (presence on jury of former police officer who was disqualified did not in the circumstances render the verdict unsafe and unsatisfactory).

4 Juries Act 1974 s 18(1)(c).

5 Juries Act 1974 s 18(1)(d). This includes physical infirmity: *R v Chapman* (1976) 63 Cr App Rep 75, CA (presence on jury of deaf person who could have been discharged did not render verdict unsafe or unsatisfactory); *R v Osmanioglu* [2002] EWCA Crim 930.

6 *R v Chapman* (1976) 63 Cr App Rep 75, [1976] Crim LR 581, CCA; *R v Bliss* (1987) 84 Cr App Rep 1, [1986] Crim LR 467, CA; *R v Raviraj* (1987) 85 Cr App Rep 93, CA; *R v Salt* [1996] Crim LR 517, CA.

7 Juries Act 1974 s 18(3). A venire de novo will be ordered in a criminal case if, by reason of personation, a person whose name is not on the panel serves as a juror and the personation is not discovered until after verdict and judgment: *R v Tremearne* (1826) 5 B & C 254; *R v Wakefield* [1918] 1 KB 216, CCA; and see *R v Kelly* [1950] 2 KB 164 at 173-174, [1950] 1 All ER 806 at 810-811, CCA. As to venire de novo see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1895. As to personation of a juror see PARA 858; and

**CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 730. Where a person whose name was on the panel answered to the name of another member of the panel by mistake when it was called and was sworn and served in that person's name, the court was divided on the question whether there had been a mistake: *R v Mellor* (1858) Dears & B 468, CCR. In a civil case, if a person not on the panel has served, there is a discretion whether or not to grant a new trial; a new trial will not be granted unless substantial injustice has been done by a wrong juror having served: *Wells v Cooper* (1874) 30 LT 721; *Hill v Yates* (1810) 12 East 228; and see *Earl of Falmouth v Roberts* (1842) 9 M & W 469, where the fact that the wrong person was serving as a juror was known to the defendant's attorney's clerk at the time of trial. In all these cases a new trial was refused. For an instance where a new trial was granted see *Norman v Beamont* (1744) Willes 484.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/5. PAYMENT OF JURORS/854. Payment generally.

# 5. PAYMENT OF JURORS

## 854. Payment generally.

A person who serves as a juror[1] is entitled, in respect of his attendance at court[2] for the purpose of jury service, to receive payments[3] at rates determined by the Lord Chancellor with the consent of the Minister for the Civil Service[4] and subject to any prescribed[5] conditions, by way of allowance:

30 (1) for travelling and subsistence[6]; and

31 (2) for financial loss, where in consequence of his attendance he has incurred any expenditure, other than on travelling and subsistence, to which he would not otherwise be subject or he has suffered any loss of earnings, or of benefit under the enactments relating to social security, which he would otherwise have made or received[7].

The determination of the amounts payable to persons under these provisions, and the manner of making them, must be in accordance with arrangements made by the Lord Chancellor, and all such payments are made out of money provided by Parliament[8].

Similar provision is made in respect of jurors at inquests[9].

1 A person who attends for jury service in obedience to a summons to serve is deemed to serve as a juror notwithstanding that he is not subsequently sworn: Juries Act 1974 s 19(4). Section 19 does not apply to service on a jury summoned for the purposes of a trial of the pyx under the Coinage Act 1971 s 8: Juries Act 1974 s 19(6). As to the trial of the pyx see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1287 et seq.

2 As to the meaning of 'court' see PARA 804 note 1.

3 Save as provided by the Juries Act 1974 and the Coroners Act 1988, no person is entitled under any Act, rule of law, custom or agreement to payment for his services as a juror: Juries Act 1974 s 19(5) (amended by the Coroners Act 1988 Sch 3 para 16). As from a day to be appointed, this provision is amended so as to refer to the Coroners and Justice Act 2009 Sch 7 instead of the Coroners Act 1988 (see note 9): see the Juries Act 1974 s 19(5) (as so amended; and prospectively amended by the Coroners and Justice Act 2009 Sch 21 para 24). At the date at which this volume states the law, no such day had been appointed. See note 1.

4 The Lord Chancellor's functions under the Juries Act 1974 s 19 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. As to the Minister for the Civil Service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427.

5 'Prescribed' means prescribed by regulations made by statutory instrument by the Lord Chancellor with the consent of the Minister for the Civil Service: Juries Act 1974 s 19(4). As to the regulations made see the Jurors' Allowances Regulations 1978, SI 1978/1579; and PARAS 855-856.

6 Juries Act 1974 s 19(1)(a) (amended by the Administration of Justice Act 1977 Sch 2 para 7). The reference in head (1) in the text to payments by way of allowance for subsistence includes a reference to vouchers and other benefits which may be used to pay for subsistence, whether or not their use is subject to any limitations: Juries Act 1974 s 19(1A) (added by the Criminal Justice Act 2003 Sch 33 paras 1, 13). See note 1. As to travelling allowance and subsistence allowance see PARA 855.

7 Juries Act 1974 s 19(1)(b) (amended by the Administration of Justice Act 1977 Sch 2 para 7; and the Social Security (Consequential Provisions) Act 1975 Sch 1 Pt I). See note 1. As to compensation see PARA 856.

8 Juries Act 1974 s 19(3). See note 1.

9 See the Coroners Act 1988 s 25 (prospectively repealed by the Coroners and Justice Act 2009 Sch 23 Pt 1); the Coroners and Justice Act 2009 Sch 7 Pt 1 (not yet in force); and **CORONERS** vol 9(2) (2006 Reissue) PARA 1063.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/5. PAYMENT OF JURORS/855. Travelling allowance; subsistence allowance.

## 855. Travelling allowance; subsistence allowance.

Where a juror[1] travels to or from court by railway or other public conveyance, the fare actually paid may be allowed, provided that only the amount of the second class fare is allowed for travel by railway, unless for any special reason the court otherwise directs[2]. Where a juror travels to or from court by hired vehicle, there may be allowed, in the case of urgency or where no public service is reasonably available, the amount of the fare and any reasonable gratuity paid, and in any other case, the amount of the fare for travel by the appropriate public services[3]. Where a juror travels to or from court by private conveyance there may be allowed a sum not exceeding the relevant amount[4].

The subsistence allowance to which a juror is entitled[5] is the relevant amount[6].

Similar provision is made in respect of a juror at an inquest[7].

1 For these purposes, a reference to 'juror' includes a reference to a person who, in obedience to a summons to serve on a jury, attends for service as a juror notwithstanding that he is not subsequently sworn and any reference to service as a juror is to be construed accordingly: Jurors' Allowances Regulations 1978, SI 1978/1579, reg 2(1).

2 Jurors' Allowances Regulations 1978, SI 1978/1579, reg 3.

3 Jurors' Allowances Regulations 1978, SI 1978/1579, reg 4.

4 Jurors' Allowances Regulations 1978, SI 1978/1579, reg 5. The 'relevant amount' means an amount calculated in accordance with rates or scales for the time being determined for the relevant allowance by the Lord Chancellor, with the consent of the Minister for the Civil Service: reg 2(2). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. As to the Minister for the Civil Service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427.

5 Ie under the Juries Act 1974 s 19 (see PARA 854): Jurors' Allowances Regulations 1978, SI 1978/1579, reg 6.

6 Jurors' Allowances Regulations 1978, SI 1978/1579, reg 6. See note 4.

7 See the Jurors' (Coroners' Courts) Allowances Regulations 1975, SI 1975/1091; and **CORONERS** vol 9(2) (2006 Reissue) PARA 1063.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/5. PAYMENT OF JURORS/856. Compensation for loss of earnings and additional expenses.

### 856. Compensation for loss of earnings and additional expenses.

Where in consequence of his attendance a juror[1] has incurred any expenditure (other than travelling or subsistence) to which he would not otherwise be subject, or any loss of earnings or benefit under the enactments relating to national insurance which he would otherwise have received, the financial loss allowance to which he is entitled[2] is the amount of the expenditure or loss, provided it does not exceed the relevant amount[3].

Similar provision is made in respect of a juror at an inquest[4].

1 As to the meaning of 'juror' see PARA 855 note 1.

2 Ie under the Juries Act 1974 s 19 (see PARA 854): Jurors' Allowances Regulations 1978, SI 1978/1579, reg 7.

3 Jurors' Allowances Regulations 1978, SI 1978/1579, reg 7. As to the meaning of 'relevant amount' see PARA 855 note 4.

4 See the Jurors' (Coroners' Courts) Allowances Regulations 1975, SI 1975/1091; and **CORONERS** vol 9(2) (2006 Reissue) PARA 1063.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/6. LIABILITY/857. Immunity of jurors exercising office.

## 6. LIABILITY

### 857. Immunity of jurors exercising office.

No juror, properly empanelled[1], is punishable for, nor will any claim lie against him in respect of, anything said or done by him in the discharge of his office[2].

1 The privilege would not extend to a person not summoned for jury service who by confederacy with the clerk of the court procured himself to be called and sworn on a jury with intent to serve some malicious purpose: *Scarlet's Case* (1612) 12 Co Rep 98. As to the empanelling of jurors see PARA 812 et seq.

2 The immunity of jurors in claims brought by persons injured by a wrongful verdict was established in *Floyd v Barker* (1607) 12 Co Rep 23, where it was held that a writ for conspiracy would not lie against a member of a grand jury on the part of a person indicted by it, but afterwards acquitted. The immunity of jurors from punishment for wrongful verdicts was established in *Bushell's Case* (1670) 6 State Tr 999, where on writ of habeas corpus the return was made that the defendants were committed for returning a verdict 'against the plain and manifest weight of evidence, and against the direction of the court on a point of law' and it was held by Vaughan CJ that a jury could not be punished in a criminal case for such a finding. See further 3 Hallam's Constitutional History 9-12; 1 Holdsworth's History of English Law (7th Edn) 343-346. A juror cannot be indicted for breaking his oath as juror: Hawk PC (8th Edn) 432. The immunity of jurors falls under the general principle that no prosecution or claim will lie for words written or spoken in the course of any judicial proceeding: see *R v Skinner* (1774) Lofft 54 at 56 per Lord Mansfield CJ; *Henderson v Broomhead* (1859) 4 H & N 569 at 579, Ex Ch, per Crompton J. As to absolute privilege in relation to the administration of justice see **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 97-101.

Halsbury's Laws of England/JURIES (VOLUME 61 (2010) 5TH EDITION)/6. LIABILITY/858. Miscellaneous offences by or against jurors.

### 858. Miscellaneous offences by or against jurors.

It is contempt of court to use or threaten violence, or even to use threatening or abusive language, in or near the courts to a juror, and such an offence can be dealt with summarily upon complaint made[1].

Under the common law any person who attempts to corrupt or influence a jury is guilty of the offence of embracery, and any juror who wilfully or corruptly consents to embracery is guilty of an offence[2]. The offence of embracery is now all but obsolete and the better course may be to charge the persons concerned with perverting the course of justice[3]. There is also now a statutory offence of intimidation of a juror or potential juror[4].

It is an indictable offence at common law to personate a juror[5].

It is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings[6].

Jurors who determine their verdict capriciously, for example by lot or by tossing a coin, are in contempt of court[7].

Various statutory offences may be committed by persons summoned for jury service and by jurors who fail to attend for service[8].

1 Hawk PC (8th Edn) 62; 1 Duncombe's Trials per Pais (8th Edn) 269. See further **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 434. As to jury tampering see further PARA 821.

2 *Jepps v Tunbridge and Wiseman* (1611) Moore KB 815; and see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 729. See also note 1.

3 See eg *R v Lalani* [1999] 1 Cr App Rep 481, [1999] Crim LR 992, (1999) Times, 28 January, CA (prosecution must prove intention to pervert the course of justice). As to perverting the course of justice see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 731. See also note 1.

4 See the Criminal Justice and Public Order Act 1994 s 51; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 726. This offence is in addition to and not in derogation of offences subsisting at common law: s 51(11). As to the quashing of acquittals tainted by the intimidation of or interference with a juror see the Criminal Procedure and Investigations Act 1996 Pt VII (ss 54-57); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1276. See also note 1.

5 *R v Wakefield* [1918] 1 KB 216, 13 Cr App Rep 56, CCA. It is not necessary to prove any corrupt motive or an intention to deceive: *R v Clark* (1918) 82 JP 295, (1918) 26 Cox CC 138. As to personation of a juror see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 730. Personation is also contempt of court: *R v Levy* (1916) 32 TLR 238; and see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 434.

6 Contempt of Court Act 1981 s 8(1). See also **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 434, 451.

7 *Langdell v Sutton* (1737) Barnes 32; *Foster v Hawden* (1677) 2 Lev 205. Such an offence is almost impossible to prove given the provisions of the Contempt of Court Act 1981 s 8(1): see the text and note 6.

8 See PARAS 811, 818.